

ATTACHMENT 21

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Page 1

1 UNITED STATES DISTRICT COURT
2 EASTERN DISTRICT OF PENNSYLVANIA
3

4 IN RE: PROCESSED EGG PRODUCTS MDL NO. 2002
5 ANTITRUST LITIGATION 08-md-02002
6 -----

7 THIS DOCUMENT RELATES TO:
8 ALL ACTIONS
9

10
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12

13 VIDEOTAPED DEPOSITION OF JEFF HARDIN
14

15 Taken at Young, Wells Williams,
16 4450 Old Canton Road, Suite 200,
Jackson, Mississippi, on Friday,
April 18, 2014, beginning at 9:16 a.m.

17
18
19
20 REPORTED BY:

21 CELESTE O. WERKHEISER, RMR
22
23
24
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<p style="text-align: right;">Page 7</p> <p>1 EXHIBITS: Continued</p> <p>2 Exh 76 Evolution of the UEP Certified Program - April 11, 2007.....290</p> <p>3</p> <p>4 Certificate of Reporter.....312</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 Good morning. James Almon,</p> <p>2 representing the Kroger plaintiffs.</p> <p>3 MR. HOLLADAY:</p> <p>4 Rob Holladay, Cal-Maine Foods.</p> <p>5 MR. ROBISON:</p> <p>6 Brian Robison, with Gibson, Dunn &</p> <p>7 Crutcher, for Cal-Maine Foods.</p> <p>8 MR. HARDIN:</p> <p>9 Charles Hardin with Cal-Maine Foods.</p> <p>10 VIDEOGRAPHER:</p> <p>11 People on the phone.</p> <p>12 MS. MARKOWITZ:</p> <p>13 Sharon Markowitz for Michael Foods on</p> <p>14 the phone.</p> <p>15 MS. HANSON:</p> <p>16 Amy Hanson with Keller Rohrback for</p> <p>17 the direct purchaser plaintiffs, also.</p> <p>18 CHARLES JEFFREY HARDIN</p> <p>19 having been first duly sworn, was</p> <p>20 examined and testified, as follows:</p> <p>21 EXAMINATION</p> <p>22 BY MR. SCHIRMER:</p> <p>23 Q. Mr. Hardin, would you please state</p> <p>24 your full name for the record?</p> <p>25 A. Charles Jeffrey Hardin.</p>

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<p style="text-align: right;">Page 10</p> <p>1 Q. Do you go by Jeff most of the time?</p> <p>2 A. Go by Jeff, yes.</p> <p>3 Q. I will call you Mr. Hardin today, at</p> <p>4 least --</p> <p>5 A. Jeff is fine.</p> <p>6 Q. No. Not here, I'm afraid.</p> <p>7 What's your current address?</p> <p>8 A. 3650 Gunther Road, La Grange, Texas.</p> <p>9 Q. And have you ever been -- had your</p> <p>10 testimony taken in a deposition like this</p> <p>11 before?</p> <p>12 A. No.</p> <p>13 Q. Have you ever testified in a</p> <p>14 courtroom?</p> <p>15 A. No.</p> <p>16 Q. Have you ever even signed an</p> <p>17 affidavit that says you're under oath?</p> <p>18 A. I've probably signed some affidavits,</p> <p>19 but I -- yes, I've done that.</p> <p>20 Q. Well, since you haven't testified</p> <p>21 before, let me go through a few of the rules</p> <p>22 that I'm certain your counsel has, but they're</p> <p>23 important for the two of us today.</p> <p>24 A. Okay.</p> <p>25 Q. Given that we both, I think, like to</p>	<p style="text-align: right;">Page 12</p> <p>1 Q. I will try and, likewise, listen to</p> <p>2 you and let you finish. If I break in on you,</p> <p>3 just make it clear to me that you're still</p> <p>4 talking. I will let you finish.</p> <p>5 A. Okay.</p> <p>6 Q. Counsel, I'm certain, will also help</p> <p>7 me along on that one.</p> <p>8 I also need you to answer audibly, to</p> <p>9 talk clearly. Celeste here is real good, okay,</p> <p>10 but she got a little irritated with me a couple</p> <p>11 days ago when I went real fast. So you have to</p> <p>12 make sure that it's something she can take down.</p> <p>13 Even magical fingers can only go so fast.</p> <p>14 A. Okay.</p> <p>15 Q. You're under oath here.</p> <p>16 A. Uh-huh.</p> <p>17 Q. It's just like -- it's not --</p> <p>18 frankly, we like to say it's just like being in</p> <p>19 a courtroom. You're still under the same</p> <p>20 obligations being under oath. You don't have a</p> <p>21 jury. This may be shown to a jury, I don't</p> <p>22 know.</p> <p>23 A. Okay.</p> <p>24 Q. Is there any reason why you can't</p> <p>25 testify here today? Are you under any</p>
<p style="text-align: right;">Page 11</p> <p>1 talk a little faster than we probably should,</p> <p>2 just from listening to you, try to keep -- try</p> <p>3 to listen to my questions, let me finish my</p> <p>4 questions. Give your counsel a chance to</p> <p>5 object, which he most certainly will do at some</p> <p>6 point today.</p> <p>7 A. Okay.</p> <p>8 Q. Unless he tells you not to answer,</p> <p>9 you can go ahead and answer the question. Just</p> <p>10 let him get his question out.</p> <p>11 Now, if he tells you not to answer,</p> <p>12 I'm going to assume that you're going to be a</p> <p>13 good witness and do what your counsel says,</p> <p>14 okay?</p> <p>15 A. Absolutely.</p> <p>16 Q. Okay.</p> <p>17 A. Yeah.</p> <p>18 Q. Now, the second rule is, you have to</p> <p>19 not only let me finish, but don't talk over me,</p> <p>20 don't anticipate my questions.</p> <p>21 A. Okay.</p> <p>22 Q. Sometimes I may ask a totally</p> <p>23 different question by the end. Now, that will</p> <p>24 lead to an objection, but that's okay.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 13</p> <p>1 medication?</p> <p>2 A. No.</p> <p>3 Q. Okay. Any other reason?</p> <p>4 A. Right now, I'm good.</p> <p>5 Q. Right now, you're good. Okay. By</p> <p>6 the end, I hope you're still just as happy a</p> <p>7 fellow, except for being angry at me.</p> <p>8 A. Well, let's don't get angry.</p> <p>9 Q. I will do my best.</p> <p>10 A. All right. Good.</p> <p>11 Q. Where are you currently employed?</p> <p>12 A. Cal-Maine Foods.</p> <p>13 Q. What is your position there?</p> <p>14 A. My title is Vice President of Sales.</p> <p>15 Q. Without being -- are you a corporate</p> <p>16 officer?</p> <p>17 A. Yes, sir.</p> <p>18 Q. What does it mean to be Vice</p> <p>19 President of Sales?</p> <p>20 A. I have a staff that works for me, and</p> <p>21 we coordinate the sales activities for our</p> <p>22 company.</p> <p>23 Q. You said you have a staff that works</p> <p>24 for you. What are their jobs? Let's start with</p> <p>25 that.</p>

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<p style="text-align: right;">Page 14</p> <p>1 A. They have direct responsibilities to 2 several of our customers that we call on, 3 primarily the larger ones. And I work with them 4 in the coordination of those activities. 5 Q. Do you also meet with customers 6 yourself? 7 A. Yes. 8 Q. You said that they have direct 9 responsibilities for several of the customers. 10 By direct responsibilities, what do you mean? 11 A. They will go see customers, do any 12 activities that either we want to accomplish or 13 our customer wants to accomplish, and coordinate 14 those through me to try to get it done. 15 Q. How long have you been a Vice 16 President of Sales for Cal-Maine? 17 A. I don't know. 18 Q. Okay. 19 A. It's been a while. 20 Q. Okay. 21 A. I really don't know the date. 22 Q. How long have you been in the eggs 23 business? 24 A. I graduated from Alabama in '82, so I 25 started in '82 with Cargill.</p>	<p style="text-align: right;">Page 16</p> <p>1 as to whether we're talking about shell eggs or 2 egg products? Can we do that? 3 A. Oh, sure. I will not be able to help 4 you much on egg products -- 5 Q. All right. 6 A. -- because I don't know anything 7 about them, but -- 8 Q. I didn't think so. 9 A. Right. 10 Q. How long were you with Cargill 11 selling fresh eggs? 12 A. I was with them until the buy-out. 13 Cal-Maine bought their -- Cargill's egg assets 14 in '88 or '89, something like that. 15 So I started in '82 and was with them 16 until Cargill sold their fresh egg assets to 17 Cal-Maine. 18 Q. At that point, did you become an 19 employee of Cal-Maine? 20 A. Yes, sir. 21 Q. What was your initial title with 22 Cal-Maine when you started there; do you 23 remember? 24 A. I don't remember. 25 Q. Were you in sales?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. And what were you doing with Cargill? 2 A. Sales. Worked sales/service 3 activity. 4 Q. What were you selling? 5 A. Fresh eggs. 6 Q. Cargill handled fresh eggs? 7 A. Uh-huh. 8 MR. ROBISON: 9 Say yes. 10 A. Oh, I'm sorry. 11 MR. SCHIRMER: 12 Q. With Cargill, was it shell eggs, or 13 was it liquid egg? 14 A. Shell eggs. 15 Q. Shell eggs at the time. 16 Today we're going to be talking about 17 eggs in general. And I'll try and make it clear 18 when I'm talking about shell eggs, but there may 19 be times when I'm going to ask you about things 20 like egg products or what those are. 21 A. Okay. 22 Q. And, in fact, I'm sure I will. 23 A. Okay. 24 Q. And when we talk to each other about 25 that, can we try and make sure that we are clear</p>	<p style="text-align: right;">Page 17</p> <p>1 A. I was in sales, yes. 2 Q. And was your job then -- what did 3 your job entail at that time? 4 A. At that time, my primary 5 responsibility was McDonald's Corporation. We 6 supplied fresh eggs to McDonald's. 7 Q. Well, when you say your primary 8 responsibility was to McDonald's, did that 9 include negotiating contracts with McDonald's? 10 A. Agreements. 11 Q. Agreements? 12 A. Agreements, yes. But, you know, just 13 the daily activities that go along with 14 servicing an account like McDonald's. 15 Q. What do you mean by the daily 16 activities that go along with servicing an 17 account like McDonald's? 18 A. Coordinating orders between plants, 19 going to dinner, trying to accomplish their 20 objectives, participating in their charitable 21 activities. Just relationship building and 22 taking care of their business. 23 Q. Did there come a time when your job 24 responsibilities changed? 25 A. I wouldn't say so much changed but</p>

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<p style="text-align: right;">Page 18</p> <p>1 increased, had more and more responsibilities as 2 time went on. 3 Q. And at some point you became a Vice 4 President of Sales for Cal-Maine. 5 A. Yes, sir. 6 Q. I'd like for you to take a look at 7 what was marked yesterday as Exhibit 14. 8 A. Yes, sir. 9 MR. SCHIRMER: 10 For those of you on the phone, 11 yesterday's exhibit was marked and is CM00090460 12 through 467. 13 Q. Do you recognize this? 14 A. I saw it before I came in here, but I 15 don't recognize it from the day, but I saw it as 16 part of the preparation work. 17 Q. One thing I'm going to suggest for 18 you today. I will ask you in just a few minutes 19 if you spent any time with your lawyer. 20 Anything that you -- make sure that when you're 21 about to say -- like, if I show you something, 22 and he might have shown it to you, that's okay, 23 but if I ask -- but be very careful about stuff 24 like that. I don't want to impinge upon the 25 privilege and have anything go on.</p>	<p style="text-align: right;">Page 20</p> <p>1 MR. SCHIRMER: 2 Q. In or around 2002, if you go back to 3 the first page, it lists you -- you'll see 4 there's Fred Adams at the top, CEO, Chairman of 5 the Board? 6 A. Yes, sir. 7 Q. Would you have a look at this for 8 just a minute and tell me if this, to your 9 recollection, accurately describes the 10 organization of Cal-Maine Foods, Inc. at the end 11 of 2002? 12 A. From the best of my recollection, 13 this looks like what we'd have looked like back 14 then. 15 Q. Now, if you look at the middle 16 section under the shell egg division -- 17 A. Yes, sir. 18 Q. -- under marketing, there's Jeff 19 Hardin, Vice President, Flatonia, Texas. 20 A. Uh-huh. 21 Q. That's you? 22 A. Yes, sir. 23 Q. And next to your name, there's either 24 an asterisk or a star, I do not say which one, 25 and it says "corporate officer."</p>
<p style="text-align: right;">Page 19</p> <p>1 A. Okay. 2 Q. What you just did was fine because if 3 you see something during preparation that 4 refreshes your recollection or that you've seen 5 it, that's okay. 6 MR. ROBISON: 7 Don't talk about what we talked 8 about. That's what he's saying. 9 A. Right, okay. 10 MR. SCHIRMER: 11 Q. That's just -- 12 A. Sure, I appreciate it. 13 Q. I don't want to get into this in the 14 middle of our deposition -- 15 A. Right, okay. 16 Q. -- okay? 17 It's got a handwritten date down here 18 of 12-19-02. 19 A. Okay. 20 Q. And it's attached -- it was done for 21 a lender meeting, apparently, at that date, if 22 you look at the next page. 23 A. Okay. 24 MR. ROBISON: 25 Object to form.</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Okay. 2 Q. Does that refresh your recollection 3 as to whether you were a corporate officer in 4 about 2002? 5 A. I'm assuming I was. 6 Q. Okay. It says you're a Vice 7 President. 8 A. Vice President. I think I'm an 9 officer of the company. I think I became an 10 officer of the company when I was promoted. 11 Q. Okay. Now, I want you to look at the 12 last page of this document. For most of this 13 deposition, I'm going to be asking you about the 14 time period, basically, 2000 through 2008. 15 A. Okay. 16 Q. But I will go forward a little bit 17 into a little later time, and I will try not to 18 go any further back than that, except for asking 19 you about what you did at Cal-Maine in a little 20 more detail. 21 If you look at this last page it 22 says, "Cal-Maine Foods Top Ten Egg Customers." 23 Would you have a look at that list just a 24 moment? 25 A. Okay.</p>

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<p style="text-align: right;">Page 22</p> <p>1 Q. Based upon your recollection, does 2 this appear to be an accurate list of 3 Cal-Maine's top ten egg customers during -- for 4 fiscal year 2002? 5 A. Yes, sir. 6 Q. Now, I take it -- has the list of 7 your top ten customers changed over time? 8 A. Yes, sir. 9 Q. Let me ask a couple questions. Who 10 is M.D.I. on this? 11 A. Stands for Merchant Distributors, 12 Incorporated. 13 Q. Do you know what Merchant 14 Distributors was? 15 A. That was a Ken Paramore account, so 16 I'm going from memory here, but M.D.I. was a 17 distributor out of South Carolina, I believe. 18 Q. Mr. Paramore did testify about that 19 yesterday. I'm just trying to make -- one of 20 the things I want to check on is which of these 21 were your responsibility or which would have 22 been portions of your responsibility. 23 For example, did you have any 24 responsibility for Walmart in or about 2000? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 24</p> <p>1 MR. ROBISON: 2 You can answer if you know. 3 A. They had different requirements. 4 MR. SCHIRMER: 5 Q. What do you mean by different 6 requirements? 7 A. Walmart was a warehouse 8 distribution-type account that picked up eggs at 9 our dock, and Sam's was a store door-type 10 arrangement, where we delivered eggs directly to 11 their clubs. 12 Q. Okay. I promise I'll come back to 13 that -- 14 A. Okay. 15 Q. -- the way those operate. 16 H-E-B, who's that? 17 A. It's H-E-B Grocery Company in 18 San Antonio, Texas. 19 Q. Was that one of your accounts? 20 A. Yes, sir. 21 Q. Today, do you just coordinate the 22 contacts with H-E-B? 23 A. I'm not sure exactly what you mean. 24 Q. Well, you said you have people who 25 work for you who do the day to day --</p>
<p style="text-align: right;">Page 23</p> <p>1 Q. Was that national or regional? 2 A. Yes, sir. 3 Q. Okay. 4 A. Yes, sir. I'm sorry, nationally. 5 Q. National, okay. 6 Now, it says Walmart 1, and it has 7 Sam's and Walmart total. Were there more than 8 one sub-account for Walmart at that time? 9 A. No, sir. We just kind of accounted 10 for them differently in our mind. We had 11 different buying groups, the Walmart team and 12 the Sam's team, so I just accounted for them 13 differently in everything I did. 14 Q. What do you mean, you accounted for 15 them differently? 16 A. In my mind. 17 Q. Okay. That's fair enough. 18 A. In my mind, yeah. 19 Q. When you were selling to them, did 20 you use the same basic pricing benchmarks? 21 MR. ROBISON: 22 Object to form. 23 A. I'm sorry? 24 MR. SCHIRMER: 25 Q. You can still answer.</p>	<p style="text-align: right;">Page 25</p> <p>1 A. I do that one, too. 2 Q. Okay. 3 A. Yeah. 4 Q. Food Lion. Was that -- did you have 5 a portion of that account, or was that 6 Mr. Paramore's? 7 A. Mr. Paramore's. 8 Q. Eggs America. I'll come back to that 9 in just a minute. 10 A. Okay. 11 Q. The Kroger, Dillon, Dillons and 12 Kroger, why are they together? 13 A. I really don't know. I didn't have 14 responsibility for that account, so -- 15 Q. Okay. At least not in 2002? 16 A. I can tell you that probably, 17 probably the 11 million is probably some 18 specialty eggs that we distributed to Kroger. 19 And the Dillons is the division in Kansas. 20 Q. Did you ever deal with Krogers or 21 Dillons in Memphis? 22 A. No, sir. 23 Q. I'm from Memphis. 24 A. You're from Memphis? I lived there 25 for a while, yeah, when I was with Cargill.</p>

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<p style="text-align: right;">Page 26</p> <p>1 Q. Then there's Albertsons. Was that</p> <p>2 one of your accounts?</p> <p>3 A. Yes, sir.</p> <p>4 Q. Nationally or --</p> <p>5 A. Nationally.</p> <p>6 Q. Then there's Bruno's. And I'm afraid</p> <p>7 I didn't ask about that yesterday.</p> <p>8 A. Bruno's was -- the time frame here</p> <p>9 gets a little foggy, okay? Because Bruno's</p> <p>10 declared bankruptcy. Bi-Lo bought them out.</p> <p>11 So probably in this time frame, if</p> <p>12 Bruno's existed, yes. And they obviously</p> <p>13 existed, so, yeah, that would have been one of</p> <p>14 my accounts.</p> <p>15 Q. Now, number 10, it says Bi-Lo.</p> <p>16 A. Correct, which is the one that bought</p> <p>17 Bruno's. I just don't remember when.</p> <p>18 Q. Was that one of your accounts?</p> <p>19 A. No. As a matter of fact, when Bi-Lo</p> <p>20 bought Bruno's, then it switched to Ken</p> <p>21 Paramore.</p> <p>22 Q. All right. And you don't remember</p> <p>23 when that was.</p> <p>24 A. No, sir, I don't.</p> <p>25 Q. What is Fiesta?</p>	<p style="text-align: right;">Page 28</p> <p>1 exhibit numbers in front of me, so if you would</p> <p>2 repeat Bates labels for those docs that have</p> <p>3 Bates labels, that would be great.</p> <p>4 MR. SCHIRMER:</p> <p>5 I certainly will if the labels came</p> <p>6 out on my copies, which is a real problem given</p> <p>7 what came out last night, trust me.</p> <p>8 MS. MARKOWITZ:</p> <p>9 Okay. Thanks.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. So I will represent to you that this</p> <p>12 is a page from your website, the Cal-Maine</p> <p>13 website, www.Cal-Maine.com. And you'll be</p> <p>14 seeing other pages later today.</p> <p>15 A. Okay.</p> <p>16 Q. If you look at the page -- there's a</p> <p>17 page that lists the top ten customers. I was</p> <p>18 just on it, and I took my finger off of it.</p> <p>19 It's on page 13, on the lower left-hand corner.</p> <p>20 See that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Now, it lists the top ten customers</p> <p>23 for -- as of -- for fiscal 2013, on the basis of</p> <p>24 sales, I guess. Is that approximately --</p> <p>25 A. Ask me one more time, I'm sorry.</p>
<p style="text-align: right;">Page 27</p> <p>1 A. Fiesta is a chain of grocery stores</p> <p>2 in Texas.</p> <p>3 Q. Was that one of your accounts?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Now, I would like you to turn to</p> <p>6 Exhibit 15, which is this document right here.</p> <p>7 A. Okay.</p> <p>8 Q. It was introduced yesterday. Why</p> <p>9 don't you have a look at it. I gave you a</p> <p>10 colored picture, so I think it's kind of cool.</p> <p>11 And it's just something so you can familiarize</p> <p>12 yourself with it. I may be using this as a</p> <p>13 touchstone for some parts of this deposition.</p> <p>14 A. Okay.</p> <p>15 Q. I understand it's later in time, but</p> <p>16 we'll be asking about it over time.</p> <p>17 A. Okay.</p> <p>18 MR. SCHIRMER:</p> <p>19 Folks on the phone, this is not a</p> <p>20 Bates numbered document. As I said, yesterday</p> <p>21 it was marked as Exhibit 15.</p> <p>22 Were both of you on the phone</p> <p>23 yesterday?</p> <p>24 MS. MARKOWITZ:</p> <p>25 Yes. Unfortunately, I don't have the</p>	<p style="text-align: right;">Page 29</p> <p>1 Q. This appears to list the top ten</p> <p>2 customers on the basis of fiscal year 2013</p> <p>3 sales.</p> <p>4 A. Yes.</p> <p>5 Q. Would this be a current list of your</p> <p>6 top ten customers, to the best of your</p> <p>7 knowledge?</p> <p>8 A. To the best of my knowledge, this</p> <p>9 would, yes.</p> <p>10 Q. Okay. Now, Publix Super Markets,</p> <p>11 which apparently is the previous one, when did</p> <p>12 they first become a customer of Cal-Maine?</p> <p>13 A. I don't know. It was a Ken Paramore</p> <p>14 account. We've done business with them a long</p> <p>15 time, but --</p> <p>16 Q. So is this a regional account, or is</p> <p>17 this a national account?</p> <p>18 A. My recollection was that -- well,</p> <p>19 it's regional. The account itself is primarily</p> <p>20 a southeastern United States account.</p> <p>21 We started doing some business with</p> <p>22 Publix early on in the Carolinas, but I don't</p> <p>23 recall the dates of any of them.</p> <p>24 Q. There's one that I don't understand</p> <p>25 at all, so maybe you can help me. If you look</p>

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<p style="text-align: right;">Page 30</p> <p>1 at number 5, CCF Brands. What is CCF Brands?</p> <p>2 A. CCF Brands is a vendor to Walmart and</p> <p>3 some of their distribution centers, and I packed</p> <p>4 some eggs for them.</p> <p>5 Q. Now, you account for them differently</p> <p>6 than Walmart and Sam's Club now?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do they sell nationally or</p> <p>9 regionally?</p> <p>10 A. I would say nationally.</p> <p>11 Q. Now, number 7 is ShopRite. Is that</p> <p>12 just the ShopRite groceries?</p> <p>13 A. That's probably the ShopRite business</p> <p>14 in metropolitan New York.</p> <p>15 Q. And I take it that's not one of your</p> <p>16 accounts?</p> <p>17 A. No, sir. Well, not during this time</p> <p>18 frame.</p> <p>19 Q. Not during this time frame.</p> <p>20 A. I've got responsibility for some of</p> <p>21 it now, but --</p> <p>22 Q. Which of these do you have</p> <p>23 responsibility for now?</p> <p>24 A. Since Ken retired --</p> <p>25 Q. All of it?</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Eggs America is a cooperative that</p> <p>2 was organized sometime back in the eighties to</p> <p>3 supply food service -- primarily food service</p> <p>4 distributors, a national egg program.</p> <p>5 Q. I don't know how to ask this quite</p> <p>6 correctly. What are some of the activities that</p> <p>7 Eggs America engages in?</p> <p>8 MR. ROBISON:</p> <p>9 Object to form.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. What does it do?</p> <p>12 A. The Eggs America office itself is</p> <p>13 primarily a collection agency. It collects the</p> <p>14 money -- invoices the eggs and collects the</p> <p>15 money, and then pushes out documents to its</p> <p>16 members in efforts of sales coordination.</p> <p>17 Q. Now, when you say "sales</p> <p>18 coordination," does Eggs America -- would you</p> <p>19 describe Eggs America as a single sales program</p> <p>20 among its various members?</p> <p>21 A. It is a cooperative of members -- egg</p> <p>22 producers are regional in nature, or back in</p> <p>23 this time it was, anyway.</p> <p>24 MR. ROBISON:</p> <p>25 Well, what time? When you say "this</p>
<p style="text-align: right;">Page 31</p> <p>1 A. -- all of it, yes, sir. I don't know</p> <p>2 much about them, but yes.</p> <p>3 Q. Effectively, since Ken retired,</p> <p>4 you've gained supervision over the entire group.</p> <p>5 A. Yes, sir.</p> <p>6 Q. All right. That cleans that up.</p> <p>7 So you have at least supervisory</p> <p>8 responsibilities over Winn-Dixie and Bi-Lo and</p> <p>9 some of the other accounts that were primarily</p> <p>10 Mr. Paramore's accounts in the 2000 to 2008</p> <p>11 period.</p> <p>12 A. Yes, sir.</p> <p>13 Q. Costco. What is Costco?</p> <p>14 A. They're a competitor to Sam's</p> <p>15 wholesale clubs. They're a wholesale warehouse</p> <p>16 chain based out of Washington State.</p> <p>17 Q. Now, the next one is -- please look</p> <p>18 at number 6 on this page. And if you look at</p> <p>19 the last page of the previous document, which is</p> <p>20 Exhibit 14, it was number 4.</p> <p>21 A. Yes, sir.</p> <p>22 Q. It's called Eggs America. What is or</p> <p>23 was Eggs America?</p> <p>24 A. It still is. It still is.</p> <p>25 Q. Okay.</p>	<p style="text-align: right;">Page 33</p> <p>1 time," what are you talking about?</p> <p>2 A. Well, I'm talking about the 2000 to</p> <p>3 2008 time frame that we're talking --</p> <p>4 MR. ROBISON:</p> <p>5 I just want to be clear because</p> <p>6 Exhibit 15 is from last month, and this exhibit</p> <p>7 is from 2002. So when you say "this time," for</p> <p>8 everybody's sake, kind of tell us which time</p> <p>9 you're talking about.</p> <p>10 A. I don't know that it's changed</p> <p>11 significantly, depending on the time frame we're</p> <p>12 looking at, but egg producers generally are</p> <p>13 regional in nature. And the Syscos and</p> <p>14 U.S. Food Services and UniPros and Codes and</p> <p>15 stuff like that of the world, they had desire</p> <p>16 for a consistent national egg program. And</p> <p>17 that's what Eggs America set out to accomplish</p> <p>18 when it was formed, is what I'm told. I wasn't</p> <p>19 there when it was formed, but that was their</p> <p>20 objective.</p> <p>21 MR. SCHIRMER:</p> <p>22 Q. When you say a "consistent national</p> <p>23 egg program," what did you mean by that?</p> <p>24 A. Egg quality, food safety, common</p> <p>25 place to pay. It made their accounting easy on</p>

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<p style="text-align: right;">Page 34</p> <p>1 them, evidently, a common bill coming in. 2 Just being able to -- a lot of these 3 folks, you know, they had a customer that might 4 be national in scope, like a Denny's or like a 5 Cheesecake Factory or like a -- whoever, their 6 customers, and so they needed consistency around 7 their network. And so we could offer some of 8 those things through our quality programs, our 9 audit programs, that type stuff. 10 Q. When you say "we could offer," that's 11 Eggs America? 12 A. Eggs America, correct. 13 Q. And maybe I misunderstand. I want to 14 make sure I understood what you just said. 15 A. Uh-huh. 16 Q. A number of large national food 17 service corporations were looking for a place 18 that they could essentially treat as a single 19 buyer -- a single seller to them for purposes of 20 accounting and for giving them quality 21 assurance. 22 A. That's my understanding of how it 23 formed, under a company called Kraft, I think, 24 was the genesis of it. Kraft Foods, which 25 became U.S. Food Service.</p>	<p style="text-align: right;">Page 36</p> <p>1 cooperative. 2 So the first page is the members of 3 the cooperative. The second page is some 4 subsidiary locations, looks like. And then 5 subcontractors. 6 Like I said, we're primarily regional 7 in nature, so we had subcontractors also that 8 worked with us. 9 MR. SCHIRMER: 10 Q. You're going to have to help me on 11 that. Let me understand what subcontractors 12 are. Did the main members subcontract with some 13 of the people who are listed as subcontractors 14 here for the purpose of providing eggs under the 15 Eggs America label? 16 A. Yes. 17 Q. I know some of these. I mean, it's 18 got Cal-Maine Foods. And it lists you as on the 19 marketing committee, if you go to page 1, 20 paragraph number 16. I'm terribly sorry, I 21 should have been specifying. 22 You are listed, with an asterisk next 23 to your name -- 24 A. Uh-huh. 25 Q. -- as Jeff Hardin, member of the</p>
<p style="text-align: right;">Page 35</p> <p>1 Again, I wasn't there at the time, 2 but that's the history I've been told. 3 Q. Now, is that how during the period 4 2000 to 2008 Eggs America operated, is it 5 provided a single billing, quality assurance, 6 auditing place for these food services? 7 A. We invoiced things under Eggs America 8 invoices, and all the money collected was 9 collected at the Eggs America office in Boise. 10 And it still operates like that today. 11 Q. Would you have a look at Exhibit 16, 12 please? 13 A. Okay. 14 Q. Now, have a quick look at it, because 15 it's fairly long, but -- I think it's fairly 16 simple, but make sure you have a chance to look 17 at it. 18 A. Yes, sir. Okay. 19 Q. What is this document? 20 A. It's a list of -- the first page is a 21 list of members from this time frame. Looks 22 like -- 23 MR. ROBISON: 24 Members of what? 25 A. Members of the Eggs America</p>	<p style="text-align: right;">Page 37</p> <p>1 marketing committee. 2 A. Yes, sir. 3 Q. This is in -- it says, effective 4 3-9-2000. 5 A. Uh-huh. 6 Q. Does that jive with your memory that 7 you were a member -- 8 A. Sure. 9 Q. -- of the marketing committee? 10 A. Uh-huh. 11 Q. Do you remain a member of the 12 marketing committee for Eggs America, Inc. 13 today? 14 A. Yes. 15 Q. When you're looking at the members of 16 Eggs America, Inc., is this a list of the 17 members of Eggs America, Inc. today, or are 18 there additional members or fewer? 19 A. Some have come, and some have gone. 20 Q. Okay. Could you tell me the names of 21 some who have come and some who have gone? 22 A. There's not anybody obviously on here 23 that has come, but McAnally and Kofkoff, neither 24 one of those are members anymore. 25 Q. Do you know approximately when</p>

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<p style="text-align: right;">Page 38</p> <p>1 McAnally stopped being a member?</p> <p>2 A. I don't.</p> <p>3 Q. Kofkoff, did they -- you said they're</p> <p>4 no longer a member. Does that mean that -- when</p> <p>5 did they no longer become a member; do you</p> <p>6 recall?</p> <p>7 A. I don't recall. Both of those</p> <p>8 companies were acquired.</p> <p>9 Q. Do you know who acquired them?</p> <p>10 A. I do. Moark.</p> <p>11 Q. Does anyone from Moark now</p> <p>12 participate in Eggs America, Inc.?</p> <p>13 A. No, sir.</p> <p>14 Q. And do you know approximately when --</p> <p>15 did Kofkoff continue -- strike all that.</p> <p>16 After Kofkoff was acquired by Moark,</p> <p>17 did they continue to be a member of Eggs America</p> <p>18 for a period of time?</p> <p>19 A. I don't remember.</p> <p>20 Q. There's some notations I don't</p> <p>21 understand.</p> <p>22 A. Okay.</p> <p>23 Q. Please go to the fourth page of this</p> <p>24 document. It lists -- there's a list, and on --</p> <p>25 there's a first page, Alliant Food Service, Inc.</p>	<p style="text-align: right;">Page 40</p> <p>1 America, Inc.?</p> <p>2 A. They were the old Kraft.</p> <p>3 Q. Now, if you turn to page 8 --</p> <p>4 A. Okay.</p> <p>5 Q. -- it lists Sysco Corporation, Sysco</p> <p>6 Produce Procurement.</p> <p>7 A. Uh-huh.</p> <p>8 Q. And then there's the line that's</p> <p>9 similar. Are the ones below the line local or</p> <p>10 regional Sysco offices that would be buying from</p> <p>11 Eggs America?</p> <p>12 A. It would be just like the Alliant.</p> <p>13 This would be a list of their distribution</p> <p>14 centers, from what I recall.</p> <p>15 In other words, they're headquartered</p> <p>16 in Houston. Their buying office at that time</p> <p>17 was in Salinas. Tom Watson ran it. And then</p> <p>18 all the distribution centers are listed below</p> <p>19 it.</p> <p>20 Q. And would the same be true, if you go</p> <p>21 to page 11 and 12, of Premier Foodservice</p> <p>22 Distributors and the companies listed after it?</p> <p>23 MR. ROBISON:</p> <p>24 Object to the form. Vague.</p> <p>25 A. I'm not familiar -- I don't remember</p>
<p style="text-align: right;">Page 39</p> <p>1 accounting, and then there's a line.</p> <p>2 A. A what? I'm sorry.</p> <p>3 Q. A line on page 4.</p> <p>4 A. Uh-huh. Oh, okay, that.</p> <p>5 Q. There's a line right there. See,</p> <p>6 right in the middle?</p> <p>7 A. Sure, uh-huh.</p> <p>8 Q. And then there's a number of</p> <p>9 companies listed.</p> <p>10 A. Uh-huh.</p> <p>11 Q. Do you know what that's about?</p> <p>12 A. Sure.</p> <p>13 Q. What is it?</p> <p>14 A. This is just -- you know, I told you</p> <p>15 a minute ago that the genesis of Eggs America,</p> <p>16 from what I was told, was Kraft, Kraft became</p> <p>17 Alliant Food Service. They were based in</p> <p>18 Deerfield, Illinois. So this is their corporate</p> <p>19 information at the top. Then the line. And</p> <p>20 then all the stuff beyond that is their</p> <p>21 distribution centers around the country.</p> <p>22 Q. And "not on," what does that mean?</p> <p>23 A. That means they did not participate</p> <p>24 in the Eggs America/Alliant corporate program.</p> <p>25 Q. And Alliant was a customer of Eggs</p>	<p style="text-align: right;">Page 41</p> <p>1 Premier specifically, and I'm not --</p> <p>2 MR. SCHIRMER:</p> <p>3 Q. Do you remember any of the companies</p> <p>4 listed on pages 11 and 12, after the line on</p> <p>5 page 11, as being customers of Eggs America,</p> <p>6 Inc.?</p> <p>7 A. I do not remember any of them. I</p> <p>8 remember the name Premier, but I don't remember</p> <p>9 any of these companies. Looks like, just as I</p> <p>10 glance through it, most of them were outside of</p> <p>11 my marketing area of Eggs America.</p> <p>12 Q. Who are Eggs America, Inc.'s</p> <p>13 customers today?</p> <p>14 A. Well, Alliant became something else</p> <p>15 and eventually became U.S. Food Service.</p> <p>16 Sysco still exists as it did back in</p> <p>17 this time frame.</p> <p>18 I don't know about Premier. I don't</p> <p>19 recall anything with Premier.</p> <p>20 We have a group of customers called</p> <p>21 UniPro that are, I'm assuming, a cooperative of</p> <p>22 food service distributors that is called -- the</p> <p>23 group is called UniPro.</p> <p>24 I don't remember if Marriott's --</p> <p>25 they've closed all that stuff down and sold it.</p>

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<p style="text-align: right;">Page 42</p> <p>1 Yeah. Here's the UniPro stuff back here.</p> <p>2 So all of these, you know,</p> <p>3 typically -- they've got buying groups -- once</p> <p>4 you get beyond U.S. Food Service and Sysco, the</p> <p>5 biggies, then the little guys, the smaller guys,</p> <p>6 get together, and they form cooperatives. And</p> <p>7 they're looking for some of the same stuff so</p> <p>8 they can compete with the big guys.</p> <p>9 Q. Are you familiar with a group called</p> <p>10 the United Egg Producers?</p> <p>11 A. Yes, sir.</p> <p>12 Q. What is it?</p> <p>13 A. United Egg is -- I don't know what</p> <p>14 they call it, whether it's a cooperative or what</p> <p>15 it is, but it's an association of egg producers.</p> <p>16 Q. Have you ever attended any meetings,</p> <p>17 the UEP meetings?</p> <p>18 A. I'm sure I have.</p> <p>19 Q. Have you ever been a member of any</p> <p>20 UEP committees? Have you ever been a</p> <p>21 representative from Cal-Maine on any UEP</p> <p>22 committee?</p> <p>23 A. No, sir.</p> <p>24 Q. Do you remember attending an animal</p> <p>25 welfare conference some years ago?</p>	<p style="text-align: right;">Page 44</p> <p>1 that from time to time, but not for my customer</p> <p>2 list, no.</p> <p>3 Q. So as far as you know with regard to</p> <p>4 customers in the United States, they do not --</p> <p>5 A. No, sir.</p> <p>6 Q. -- serve them?</p> <p>7 A. Not to my knowledge.</p> <p>8 Q. Not to your knowledge.</p> <p>9 A. No, sir.</p> <p>10 Q. And you --</p> <p>11 A. And I would think I would know.</p> <p>12 Q. You would know.</p> <p>13 A. I would know.</p> <p>14 Q. Okay. Do you know whether Eggs</p> <p>15 America -- strike that.</p> <p>16 Do you know whether UEP does any</p> <p>17 buying of feed for its members?</p> <p>18 A. I do not know.</p> <p>19 Q. Does it buy any for Cal-Maine?</p> <p>20 A. I do not know.</p> <p>21 Q. Do you have an understanding as to</p> <p>22 what percentage of Cal-Maine's feed it</p> <p>23 manufacturers for itself?</p> <p>24 A. I do not know.</p> <p>25 Q. All right. Okay.</p>
<p style="text-align: right;">Page 43</p> <p>1 A. I probably did. I don't recall it</p> <p>2 specifically. I remember taking a customer to</p> <p>3 an animal welfare presentation one time.</p> <p>4 Q. Do you remember if you ever attended</p> <p>5 any annual meetings of the United Egg Producers?</p> <p>6 A. There's possibilities, but I don't</p> <p>7 remember one.</p> <p>8 Q. Do you know whether United Egg</p> <p>9 Producers ever markets Cal-Maine's eggs for it?</p> <p>10 MR. ROBISON:</p> <p>11 Object to form.</p> <p>12 A. They would not have marketed anything</p> <p>13 that I was responsible for. I'm not sure that I</p> <p>14 understand the question exactly.</p> <p>15 MR. SCHIRMER:</p> <p>16 Q. Did they ever negotiate with your</p> <p>17 customers so that -- as to the terms and prices</p> <p>18 at which Cal-Maine will sell its eggs?</p> <p>19 A. No, sir.</p> <p>20 Q. Do they ever serve as a billing</p> <p>21 address for Cal-Maine's sales in the way that</p> <p>22 Eggs America serves for some of the Eggs America</p> <p>23 customers?</p> <p>24 A. Not for my customer list. There</p> <p>25 might be some export stuff or something like</p>	<p style="text-align: right;">Page 45</p> <p>1 A. We manufacture a lot of our own feed,</p> <p>2 but we have some buying arrangements also that</p> <p>3 I'm familiar with, but I'm not sure how many</p> <p>4 tons or anything like that.</p> <p>5 Q. We may get into that a little later.</p> <p>6 I'll represent to you that it's a lot. You</p> <p>7 manufacture almost all of it.</p> <p>8 A. Right.</p> <p>9 Q. Would you take a look at Exhibit 17?</p> <p>10 Have a quick look at it. I'm going to ask you</p> <p>11 just very briefly about it.</p> <p>12 A. Okay.</p> <p>13 Q. What is this document?</p> <p>14 A. It appears to be the minutes from a</p> <p>15 meeting we had in Houston.</p> <p>16 Q. Did you attend that meeting?</p> <p>17 A. Looks like I was there. Yes, sir.</p> <p>18 My name's on the roll.</p> <p>19 Q. Do you recall attending meetings of</p> <p>20 Eggs America at the Houston Airport Marriott?</p> <p>21 A. I don't remember this specific one,</p> <p>22 no.</p> <p>23 Q. It does say that you were there.</p> <p>24 A. Yes.</p> <p>25 Q. Who is Roger Deffner?</p>

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<p style="text-align: right;">Page 46</p> <p>1 A. Roger Deffner, I don't know his title 2 at the time, but Roger was employed by National 3 Food service out of Washington State, and he 4 represented National Food at Eggs America. 5 Q. Okay. And who's Tim Weaver? 6 A. Tim was -- I think he's the principal 7 owner of Weaver Brothers out of Versailles, 8 Ohio, and represented Weaver for the Midwest 9 PMSA of Eggs America. 10 Q. What is a PMSA? I don't understand. 11 A. It's just geographic regions. 12 Q. Who's John Klein? 13 A. My recollection is that John Klein 14 was with McAnally at the time. 15 Q. I think I know who you are, and I 16 think I know Mr. Paramore, having met both of 17 you. 18 A. Right. 19 Q. Who's Mr. O'Brien? 20 A. Kevin would have been representing 21 Kofkoff in New England. 22 Q. Now, Linda Jackson. Who is Linda 23 Jackson? 24 A. You know, she was the one, from what 25 I was told, that kind of founded Eggs America,</p>	<p style="text-align: right;">Page 48</p> <p>1 board? 2 A. I'm not sure of all of them. 3 Dolph Baker was the member from Cal-Maine. 4 Q. Do you know any other members? 5 A. No -- I'm sure I do, but it would be 6 speculation because I don't recall them. I 7 don't know their names from that time frame. 8 Q. How about today? 9 A. I would assume that Tim Weaver is on 10 the board. I would assume that Jerry Booky is 11 on the board from National Food Corporation. 12 And I'm not sure about the other members at this 13 point. But it's generally the principals or 14 the -- of the companies that serve on the board. 15 Q. For example, if you look back at 16 Exhibit 16, the front page -- I'm sorry to be 17 moving back and forth -- 18 A. It's okay. 19 Q. -- but it's a way of helping me 20 ground myself. 21 A. Okay. 22 Q. For example, on this, this lists 23 several people as board members. 24 A. Okay. 25 Q. For example, as you can see under</p>
<p style="text-align: right;">Page 47</p> <p>1 kind of put the concept together, and served as 2 its President for a long, long time. 3 Q. When did she cease being its 4 President? 5 A. Just here recently, last couple of 6 years. 7 Q. Did she essentially serve as the 8 manager of the co-op? 9 A. Yeah. That would be a good 10 description. 11 Q. It talks about the marketing 12 committee of Eggs America. What was the 13 marketing committee of Eggs America, Inc.? Or 14 what is it, if it still exists today? 15 A. It still exists. It's the sales 16 group from the member companies that coordinate 17 the activities of the co-op with the customers, 18 the customer activity. 19 Q. Are there any other corporate 20 committees of Eggs America, Inc. that you are 21 aware of? 22 A. No. Not that I know of. I'm sure 23 there was a Board of Directors, but I wasn't a 24 member of that. 25 Q. Do you know who was a member of the</p>	<p style="text-align: right;">Page 49</p> <p>1 Cal-Maine Foods, Dolph Baker, board committee 2 member. 3 A. There you go. 4 Q. Would that jive with your 5 recollection? 6 A. Yeah. I couldn't remember all their 7 names. But Jerry Booky, who I think still sits 8 on the board today. Of course, Kofkoff is off. 9 Tim Weaver, board member, committee member. So 10 yes, this is consistent with what I remember. 11 Q. Do you remember who Joe Fortin was? 12 A. I remember Joe. I met him a couple 13 of times back years ago, but it's been a long 14 time since I've seen Joe. 15 Q. Please look at Exhibit 17. 16 A. Okay. 17 Q. Would you go to page 2 of it? 18 A. Okay. 19 Q. Now, there's two sort of indented 20 lines saying "U.S. Food" and "Premier." Go 21 right to the line right underneath that, okay? 22 A. Okay. 23 Q. Begins with Ms. Jackson. It says, 24 "Ms. Jackson reported that the ratio of member 25 eggs sold to subcontractor eggs sold was</p>

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<p style="text-align: right;">Page 50</p> <p>1 88.29 percent versus 11.71 percent, exceeding 2 Capper-Volstead requirements." 3 Do you have an understanding as to 4 what Ms. Jackson was talking about? 5 A. Ms. Jackson had always indicated that 6 we had to be more than 50 percent member-owned 7 eggs to qualify as Capper. I don't know, but 8 that's just what she always said. 9 Q. And why would 88 versus 11 percent -- 10 oh, okay, I understand. So you exceeded it by 11 being 88 versus 11. 12 A. Looks like we exceeded it by 38 13 percentage points or so. 14 Q. I just wanted to make sure I 15 understood that. 16 Would you go to page 4 of this 17 document? 18 A. Okay. 19 Q. There's a section -- three indented 20 paragraphs after an initial opening three lines. 21 Do you see that? 22 A. Yes, sir. 23 Q. Okay. Third paragraph down, it says, 24 "Chris Riska led a discussion surrounding the 25 potential for 'value added' shell eggs,</p>	<p style="text-align: right;">Page 52</p> <p>1 America sold any cage free product? 2 A. For this time frame, I don't recall, 3 but I'm sure we were trying -- 4 Q. Now -- 5 A. -- to sell some. 6 Q. Sorry. 7 A. That's okay. No, I'm sure we were 8 trying to. 9 Q. Today, does Eggs America -- in the 10 period, say, 2006 through today, has Eggs 11 America begun selling a cage free product? 12 A. Yes, sir. 13 Q. Do you know approximately when that 14 was? 15 A. About what you're saying, probably. 16 2006, 2007, somewhere through there, probably. 17 Q. I don't want to talk like a lawyer. 18 Did Eggs America start selling organic and 19 enhanced feed programs at some point, eggs? 20 A. Yes, sir. 21 Q. Do you know approximately when? 22 A. Well, I thought that's what we were 23 just talking about. 24 Q. No. I was only talking about cage 25 free in that one.</p>
<p style="text-align: right;">Page 51</p> <p>1 including organic, enhanced feed programs, i.e., 2 Egg-Land's Best and cage free product." 3 And then it has you -- I guess it's 4 you, Jeff Hardin -- 5 A. Uh-huh. 6 Q. -- reporting "a limited supply of 7 organic feed had impacted the product 8 introduction on a large scale." Do you have an 9 understanding of what that meant, sir? 10 A. I don't remember specifically what 11 was restricting the supply of organic feed or 12 why we weren't in it in a bigger way, but this 13 is, you know, 14 years ago. Organics were not 14 as big a deal back then, so many of our members 15 didn't even have them, probably, at that time. 16 It probably was very limited as to what we had 17 in Cal-Maine. 18 Q. Do you know whether Eggs America at 19 this time sold organic or enhanced feed program 20 eggs? 21 A. I don't recall. I mean, I'm sure we 22 were trying. I'm sure we were trying, but I'm 23 just -- I don't recall whether we had had any 24 luck or not. 25 Q. Okay. And do you recall whether Eggs</p>	<p style="text-align: right;">Page 53</p> <p>1 A. Oh, okay. All of those, that whole 2 group that you're talking about, whether it be 3 nutrient enhanced or cage free or organic, we 4 all tried to sell those programs whenever we had 5 it available to us. 6 Q. Those kinds that we have just been 7 talking about, value-added shell eggs, organic, 8 do you have another term for those, that kind of 9 product? 10 A. Nutrient enhanced, value added. 11 Pretty much -- I mean, of course, cage free and 12 organic are different. They imply different 13 things. So nutrient enhanced would be things 14 like special feed formulations to achieve a 15 particular outcome in the egg. And then organic 16 and cage free would mean just what they say. 17 Q. Now, you said that you're sure Eggs 18 America was trying to sell them. How come? Is 19 there a different profit margin to that kind of 20 egg? 21 A. Oh, I can't speak for everybody as 22 far as profit margin goes. Our profit margins 23 would have been different in Cal-Maine for 24 those, but it was primarily driven by a need or 25 request by our customers.</p>

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<p style="text-align: right;">Page 54</p> <p>1 They wanted them. They were growing. 2 That whole segment of the industry was gaining 3 ground every year. And so this customer base, 4 along with the other customer base, was 5 requesting those products, and still do today. 6 Q. What are specialty eggs? 7 A. Well, that's what I meant by nutrient 8 enhanced, special. Typically, that would imply 9 some -- in Cal-Maine, something to do with feed 10 that made it different, something to do with the 11 animal husbandry practices of the bird. That's 12 what it would imply. 13 In other words, it would be something 14 different, it would be something special, it 15 would be different than the conventional eggs 16 that at this time frame was completely different 17 product or mix than it is today. 18 Q. Let's go back to -- that's all for 19 right now on this one. I think you can put that 20 away. I won't be asking about that one again. 21 Would you go back and have a quick 22 look at Exhibit 14 for just a minute? I forgot 23 to ask you about something. 24 A. Okay. 25 Q. On page 6, under shell egg marketing.</p>	<p style="text-align: right;">Page 56</p> <p>1 MR. ROBISON: 2 2002? 3 MR. SCHIRMER: 4 Q. The 2002 time frame? 5 A. Right. Most of the stuff would have 6 been -- and we still -- I mean, it says we 7 market in 42 states or whatever it is, but our 8 business is primarily in the south. 9 Q. Okay. Let's talk about that for just 10 a minute, and then we'll take a break. I want 11 to ask a little bit about that. 12 Please go back to Exhibit 15. 13 A. Exhibit 15? 14 Q. Yeah. 15 A. Okay. 16 Q. And the next one we'll be taking out 17 is Exhibit 28 from yesterday, but I don't think 18 we'll get to that until we take a break. Okay? 19 That's for everybody else sitting around. 20 If you look at page 3 -- 21 A. Okay. 22 Q. -- under Cal-Maine Foods' profile it 23 says: "We are the largest producer and marketer 24 of shell eggs in the United States." 25 Is that accurate to your</p>
<p style="text-align: right;">Page 55</p> <p>1 A. Under shell egg what? I'm sorry. 2 Q. Shell egg marketing, page 6. 3 A. Okay. 4 Q. There's a statement that: "We have 5 two experienced Vice Presidents of marketing, 6 Jeff Hardin and Ken Paramore." And it's -- the 7 next line is, it says: "Jeff Hardin works out 8 of our Flatonia, Texas, office. He works west 9 of the Mississippi and is responsible for 10 Walmart, Albertsons, Safeway, Sysco, 11 McDonald's," et cetera. 12 A. Okay. 13 Q. Is that an accurate statement at that 14 time? 15 A. It's close. 16 Q. Close. 17 A. I mean, the river curves a lot, but 18 it's pretty close. I mean, basically I handled 19 the west, and Kenny handled the east. 20 Q. Who handled the Midwest? Depends on 21 which side of the river you're on? 22 A. Well, yeah, it would have. But we 23 just didn't really have that much business up 24 there back in this time frame. Most of our 25 stuff was southeast -- I'm sorry?</p>	<p style="text-align: right;">Page 57</p> <p>1 understanding, sir? 2 A. To my understanding, yes. 3 Q. Okay. The fourth bullet point down, 4 and it's in blue, and there's a white -- on 5 mine, there's a white line, maybe there is on 6 yours -- it says, you are a fully-integrated egg 7 producer. What is your understanding of the 8 meaning of that? 9 A. My understanding is that we own 10 hatcheries to hatch our babies, our baby chicks. 11 We own some breeders to breed the males and the 12 females to get the baby chicks. So we hatch 13 them, then we feed them all. We've got milling 14 operations to feed them all. 15 We've got production operations to 16 produce -- or to grow -- we've got operations to 17 produce the pullets from zero to about 18 weeks 18 or so. And then at 18 or 19 weeks, we move them 19 into the laying facilities, which we own. So we 20 own the entire network distribution. 21 Q. Would you take a look at page 9? I 22 got to keep my finger there, but page 9 is the 23 next -- is the page -- so is this your 24 understanding of what you mean by a fully 25 integrated operation?</p>

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<p style="text-align: right;">Page 58</p> <p>1 A. Yes, sir.</p> <p>2 Q. Now, when it says packaging and</p> <p>3 processing, what does that mean?</p> <p>4 A. Well, when we come out -- the flow</p> <p>5 chart goes -- starting at feed mills or breeder</p> <p>6 flocks, it just -- it just kind of follows that</p> <p>7 flow chart.</p> <p>8 So once you come out of the egg</p> <p>9 production at the hen house, then the next thing</p> <p>10 you do is wash and grade the egg and package it</p> <p>11 for our customers.</p> <p>12 Q. Is that done in -- I take it, that's</p> <p>13 not done by hand anymore.</p> <p>14 A. Well, in some cases when I was</p> <p>15 growing up, but not anymore, no.</p> <p>16 Q. If you look at page 11, just a couple</p> <p>17 pages back, it says: "The facilities are state</p> <p>18 of the art and fully automated." What does that</p> <p>19 mean?</p> <p>20 A. Well, I mean, it's --</p> <p>21 Q. It's at page 11. One more back.</p> <p>22 A. Page 11.</p> <p>23 Q. One more back, I think.</p> <p>24 A. I mean, we -- we operate the newest</p> <p>25 equipment. It's fully automated, stuff that</p>	<p style="text-align: right;">Page 60</p> <p>1 asking this series of questions.</p> <p>2 A. Okay.</p> <p>3 Q. How many egg production facilities,</p> <p>4 approximately, does Cal-Maine have today?</p> <p>5 A. Honestly, I don't remember, but it's</p> <p>6 something in the high thirties.</p> <p>7 Q. Do you ever visit the chicken houses</p> <p>8 or -- what do you call them chicken houses, hen</p> <p>9 houses?</p> <p>10 A. Hen houses, chicken houses.</p> <p>11 Q. Okay.</p> <p>12 A. Yeah, chicken houses.</p> <p>13 Q. Do you ever visit chicken houses</p> <p>14 today?</p> <p>15 A. Sure.</p> <p>16 Q. Say, since 2000, have you visited</p> <p>17 them?</p> <p>18 A. Oh, sure.</p> <p>19 Q. How many people would be responsible</p> <p>20 for each chicken house on a day-to-day basis?</p> <p>21 A. I'm not good enough at that to give</p> <p>22 you a good answer. I'm sure they differ.</p> <p>23 Q. Okay. Do you know what the range and</p> <p>24 the size of chicken houses that Cal-Maine has</p> <p>25 today are?</p>
<p style="text-align: right;">Page 59</p> <p>1 does the grading portion and the packaging</p> <p>2 portion. Very labor efficient compared to the</p> <p>3 way it was done, you know, 20 years ago, 30</p> <p>4 years ago, so it's -- you know, that's accurate.</p> <p>5 Q. During the period 2000 to 2008, would</p> <p>6 that have been an accurate statement?</p> <p>7 A. Sure.</p> <p>8 Q. When we're talking about -- I think</p> <p>9 you said it was pretty automated?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Is it your understanding that an egg</p> <p>12 can go from chicken into the box and on to --</p> <p>13 into the box, be packaged without a human</p> <p>14 touching it?</p> <p>15 A. It can be done, yes.</p> <p>16 Q. Is it generally done that way at</p> <p>17 Cal-Maine?</p> <p>18 A. Generally, yes.</p> <p>19 Q. If you'd look at page 8, there's a</p> <p>20 map of the United States with Cal-Maine</p> <p>21 locations.</p> <p>22 A. Uh-huh.</p> <p>23 Q. And if you'd look over at page 10,</p> <p>24 there's something that's called egg production</p> <p>25 facilities. It's the only way I can think of</p>	<p style="text-align: right;">Page 61</p> <p>1 A. No, sir, I don't. I'm not familiar</p> <p>2 enough with the production methods to know.</p> <p>3 Q. Do you know --</p> <p>4 A. There are some are -- some are</p> <p>5 50,000, some are 300,000 hens, but I don't know</p> <p>6 specifically.</p> <p>7 Q. Are there any that are much less than</p> <p>8 50,000 hens?</p> <p>9 A. I'm sure some of the cage free stuff</p> <p>10 is way short of that.</p> <p>11 Q. What about the caged? Would there be</p> <p>12 any changed facilities that are less than</p> <p>13 50,000, to your knowledge?</p> <p>14 A. There's probably a few, but it's</p> <p>15 very, very small.</p> <p>16 Q. Okay. You just said something about</p> <p>17 cage free. You said that they would have fewer</p> <p>18 hens. Why?</p> <p>19 A. There are audit programs and animal</p> <p>20 care programs that require you to give more</p> <p>21 space to the cage free, floor space.</p> <p>22 Q. Floor space. Are they just all on</p> <p>23 one floor, one level?</p> <p>24 A. There's different methods of</p> <p>25 production, but I'm not familiar with all of</p>

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<p style="text-align: right;">Page 62</p> <p>1 them. Again, I'm a sales guy, but I've seen 2 different methods. 3 Q. I don't want you to guess. I don't 4 want you to speculate. I just want to know what 5 you've seen when you have gone into the chicken 6 farm chicken houses. 7 A. Sure, sure. 8 Q. Now, would you look at page 5 of 9 Exhibit 15. This describes the United States 10 egg industry. It says about 55 percent of the 11 egg industry is -- it says retail egg, which is 12 consumer package. Do you have an understanding 13 of what that means? 14 A. Sure. 15 Q. What is it? What does that mean? 16 A. It means that about 55 percent of all 17 eggs sold in the United States were sold in some 18 type of consumer package at retail. 19 Q. Is the 55 percent number consistent 20 with your understanding of the approximate 21 percentage of the eggs in the United States that 22 have been sold at retail over the period 2000 23 through, say, 2008? 24 MR. ROBISON: 25 Object to form. Foundation.</p>	<p style="text-align: right;">Page 64</p> <p>1 and 22 or 3 percent dollars in round numbers, 2 but don't hold me to that. Somewhere in that 3 neighborhood. 4 Q. That's a reasonable answer, sir. I'm 5 not going to ask you for exact numbers -- 6 A. Okay. 7 Q. -- off the top of your head. That 8 wouldn't be fair. 9 If you look at page 24 to this 10 document. If you want to keep your finger where 11 it is, but look at page 24, where it has 12 specialty egg sales -- 13 A. Okay. 14 Q. -- is the top of it. And -- 15 A. Is yours in color? 16 Q. Yeah. 17 A. Yes, sir. 18 Q. Okay. Let me make sure I understand, 19 that since 2007, in terms of units sold, the 20 number of specialty eggs sold by Cal-Maine has 21 gone from 59, I guess, million dozen to 22 156 million dozen; is that about right? 23 A. That appears what this represents, 24 yes, sir. 25 Q. And it's showing bars that give --</p>
<p style="text-align: right;">Page 63</p> <p>1 A. I don't recall what it would have 2 been in 2000 or 2008, but it appears to me that 3 the egg products business continues to grow, and 4 the retail package continues to shrink slightly. 5 MR. SCHIRMER: 6 Q. All right. You said something just a 7 few minutes ago that I now want to return to 8 because it reminds me. You said that you don't 9 have a lot of experience with the egg products 10 portion of the business. 11 A. Correct. 12 Q. Approximately what percentage of 13 Cal-Maine's sales is shell eggs? 14 A. I don't know off the top of my head, 15 but it's north of 90. 16 Q. Do you have an understanding as to 17 what percentage of Cal-Maine's sales of shell 18 eggs are specialty eggs today? 19 A. In dollars would be -- it's a hard 20 question to answer because it'll vary year to 21 year depending on what the egg markets are 22 doing, okay, so that's a moving number. 23 I can tell you that probably the year 24 that we just completed, our fiscal '13, we were 25 probably something like 14 or 15 percent units</p>	<p style="text-align: right;">Page 65</p> <p>1 look like it gives a ratio of the eggs. If we 2 were looking at revenue, my understanding is the 3 bar, that light blue section -- or whatever 4 color it is -- I'm colorblind, so I'm -- 5 A. Okay. 6 Q. -- would be a larger proportion of 7 the overall sales than the unit sales appear to 8 be? 9 MR. ROBISON: 10 Object to form. 11 A. That's not the way -- I may not 12 understand the question, but it appears to me 13 that the 59 to 81 to 107 to 144 and to 146 14 represent millions of dozens sold as specialty 15 eggs, and the 948 at the last chart -- the last 16 bar represents totals. So it looks like as a 17 percentage of the units or dozens. 18 MR. SCHIRMER: 19 Q. Okay. 20 A. I don't see any dollars on this. And 21 I can't do the math, but 156 divided by 948 is 22 probably about 15 percent. 23 Q. You're faster than me. 24 A. Well, no, I could be -- that's 25 probably -- I'm probably not right, but that's</p>

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<p style="text-align: right;">Page 66</p> <p>1 what it's trying to represent. 2 MR. ROBISON: 3 It's Alabama math. 4 A. Yeah, absolutely. 5 MR. SCHIRMER: 6 Q. All right. If you go back -- have a 7 look at page 12. 8 A. Okay. 9 Q. All right. 12 is -- it says 10 "Cal-Maine Customers," and it has a big pie 11 chart. And it says: "Retail, 85 percent; food 12 service, 11 percent; and, egg products and 13 miscellaneous, 4 percent." 14 What does the retail section of this 15 mean, or what is your understanding of that? 16 A. That's the grocer, the retail 17 grocers. It's the Krogers, the Walmarts, the 18 H-E-Bs, the Winn-Dixies of the world. 19 Q. Okay. And in the year, say, 2000 to 20 2008, would the proportion of sales to retail 21 food service and egg products have been roughly 22 the same as shown on this pie chart? 23 MR. ROBISON: 24 Object to form. 25 A. I couldn't answer that off the top of</p>	<p style="text-align: right;">Page 68</p> <p>1 Bates numbers CM00717659 through 677. Do you 2 have an understanding of what this document is, 3 sir? 4 A. No, sir. I mean, it's financial 5 stuff, but that's all I know. 6 Q. If you look on the first page, who's 7 Charles Randle? 8 A. It says he's Manager of Financial 9 Reporting. I mean, I know Charles. 10 Q. Oh, okay. 11 A. Yeah. He's worked with us for a 12 while. 13 Q. If you'll look on this, on the "to" 14 line down near the bottom of the second line of 15 people it's to -- 16 A. Yes. 17 Q. -- it's sent to you; is that right? 18 A. Yes, sir. Yes, sir. 19 Q. Do you receive, as an ordinary -- in 20 the ordinary course of business, copies of 21 Cal-Maine's filings with the Securities and 22 Exchange Commission? 23 A. I'm sure I do. 24 Q. Do you recall seeing this one? 25 A. No, sir.</p>
<p style="text-align: right;">Page 67</p> <p>1 my head. You know, I have lost a lot of food 2 service business in the last ten years. 3 MR. SCHIRMER: 4 Q. So it might have been a greater 5 percent -- 6 A. Food service might have been a 7 greater percentage. I've just lost a lot of 8 business in the food service sector. 9 Q. What is the "and miscellaneous" after 10 it says "egg products"? 11 A. I don't know. 12 MR. SCHIRMER: 13 Why don't we take a break on that 14 note. 15 VIDEOGRAPHER: 16 We're now going off the record. The 17 time is 10:19 a.m. 18 (A recess was taken.) 19 VIDEOGRAPHER: 20 We are now going back on the record. 21 The time is 10:47 a.m. 22 (Exhibit 46 marked.) 23 MR. SCHIRMER: 24 Q. I'm handing you what has been marked 25 as Exhibit Number 46. Exhibit Number 46 bears</p>	<p style="text-align: right;">Page 69</p> <p>1 Q. You said it's financial stuff. 2 A. That's what it appears to be. 3 Q. I take it, you don't -- this is not 4 something you pay a great deal of attention to? 5 A. No, sir. 6 Q. But you do see the financial 7 statements; they are sent around to you on an 8 ordinary basis? 9 A. Yes, sir. 10 Q. Okay. Now, if you remember a little 11 bit earlier today we were talking about Eggs 12 America, Inc.? 13 A. Yes, sir. 14 Q. I want to mark as Exhibit 47 a 15 document. 16 (Exhibit 47 marked.) 17 Q. I will have to have some more copies 18 of this made. 19 Exhibit 47 is a document bearing 20 Bates number CM00730821 and 0822. 21 MR. SCHIRMER: 22 If you have the earlier document, 23 then I'll have more copies made. You got that 24 one, Brian? 25 MR. ROBISON:</p>

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<p style="text-align: right;">Page 70</p> <p>1 Yes.</p> <p>2 MR. SCHIRMER:</p> <p>3 Q. Okay. What is this document, sir?</p> <p>4 A. It appears to be an e-mail from</p> <p>5 Brandon to me saying that he received an invoice</p> <p>6 from Rose Acre Farms.</p> <p>7 Q. The second page looks a lot like an</p> <p>8 invoice from Rose Acre.</p> <p>9 A. Correct.</p> <p>10 Q. Who is Brandon Wood, or who was he in</p> <p>11 2004 as relates to Eggs America?</p> <p>12 A. Director of Marketing and Technical</p> <p>13 Services.</p> <p>14 Q. Is he still the Director of Marketing</p> <p>15 and Technical Services for Eggs America today?</p> <p>16 A. If he is, he's also the President, so</p> <p>17 he may have a dual role.</p> <p>18 Q. So did he become the President of</p> <p>19 that when Ms. Jackson, or Ms. FitzHugh,</p> <p>20 retired --</p> <p>21 A. Right.</p> <p>22 Q. -- or left?</p> <p>23 A. Right.</p> <p>24 Q. And you are the person to, I guess.</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 72</p> <p>1 Object to the form.</p> <p>2 A. I assume that's what he meant.</p> <p>3 MR. SCHIRMER:</p> <p>4 Q. Okay. But you don't know the details</p> <p>5 of why he would say that --</p> <p>6 A. No, sir.</p> <p>7 Q. -- perhaps?</p> <p>8 A. No, sir.</p> <p>9 Q. That's what I was trying to get at.</p> <p>10 If you look at -- get Exhibit 18 out</p> <p>11 from yesterday, if you would, please.</p> <p>12 A. Yes.</p> <p>13 Q. What is it?</p> <p>14 A. It appears to be a -- or the last</p> <p>15 piece of it appears to be an e-mail from me to</p> <p>16 Ken Paramore, carbon to Dolph.</p> <p>17 Q. And did that appear to forward two</p> <p>18 other e-mails, one from Linda Jackson to you,</p> <p>19 and then the other one from Linda FitzHugh to</p> <p>20 Roger Deffner, cc'ing you?</p> <p>21 A. That's what it appears to be.</p> <p>22 Q. Do you remember receiving this</p> <p>23 e-mail?</p> <p>24 A. I don't remember it specifically, no,</p> <p>25 sir.</p>
<p style="text-align: right;">Page 71</p> <p>1 Q. He says something -- "This is an</p> <p>2 invalid invoice and therefore an invalid</p> <p>3 delivery. We cannot process invoices for, nor</p> <p>4 pay, an unapproved supplier. This action is a</p> <p>5 breach of our agreement with Sysco and in</p> <p>6 non-compliance with the Capper-Volstead Act."</p> <p>7 Do you have an understanding of what</p> <p>8 Brandon was saying when he sent you that?</p> <p>9 A. He was fussing at me. He said we</p> <p>10 were in violation of the Capper-Volstead Act,</p> <p>11 but I have no -- I didn't know whether we were</p> <p>12 or not. I was just taking care of my customer.</p> <p>13 Q. So you didn't understand what he was</p> <p>14 talking about with being -- failing to be in</p> <p>15 compliance with the Capper-Volstead Act?</p> <p>16 A. Well, I knew what he meant, but I</p> <p>17 didn't know the details surrounding it. I'm not</p> <p>18 a Capper expert by any stretch of the</p> <p>19 imagination.</p> <p>20 Q. When you say you knew what he meant,</p> <p>21 you knew that he understood -- he was telling</p> <p>22 you that this sale was somehow in violation of</p> <p>23 the Capper-Volstead Act?</p> <p>24 A. I guess --</p> <p>25 MR. ROBISON:</p>	<p style="text-align: right;">Page 73</p> <p>1 Q. In it, Ms. FitzHugh -- which is, I</p> <p>2 take it, Ms. FitzHugh is Ms. Jackson after she</p> <p>3 got married?</p> <p>4 A. I'm assuming. It changed several</p> <p>5 times.</p> <p>6 Q. Okay. It says, "Linda A. FitzHugh,</p> <p>7 formerly Jackson" --</p> <p>8 A. Right.</p> <p>9 Q. -- "President, Eggs America, Inc.,"</p> <p>10 under the second one. It says -- the last line</p> <p>11 is what I don't understand. "I cannot include</p> <p>12 Hyde County" -- it's in the first -- the last</p> <p>13 line in the middle of this paragraph. Look at</p> <p>14 the e-mail from Linda FitzHugh to Roger Deffner,</p> <p>15 cc Jeff Hardin, dated Thursday -- Thursday,</p> <p>16 okay?</p> <p>17 A. Okay.</p> <p>18 Q. And the second line -- the second to</p> <p>19 the last line of the whole thing says, "Of</p> <p>20 course, I cannot include Hyde County onto the</p> <p>21 list" -- I assume that's a list of approved</p> <p>22 subcontractors -- "until we've received a signed</p> <p>23 subcontractor form from Rose Acre."</p> <p>24 What's she talking about?</p> <p>25 A. I honestly don't know. It looks like</p>

19 (Pages 70 - 73)

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<p style="text-align: right;">Page 74</p> <p>1 Germantown Egg was approved, which was a 2 subsidiary of Rose Acre, but Hyde County, she 3 can't, but that's all I could glean from this. 4 Q. Do you have an understanding as to 5 why Hyde County would not have been approved 6 when you were buying from them? 7 MR. ROBISON: 8 Object to the form. 9 MR. SCHIRMER: 10 Q. If you were buying from them? 11 A. I don't recall, sir. I'm sorry. 12 Q. Okay. 13 MR. SCHIRMER: 14 Let's mark this document as 15 Exhibit 48. 16 (Exhibit 48 marked.) 17 Q. This is a document bearing Bates 18 number CM00730823. What is this document, sir? 19 A. I don't remember it, but it appears 20 to be Linda going to my boss to try to get this 21 thing signed. 22 Q. Do you understand -- after "Good 23 Morning Dolph," the first sentence says, "I need 24 your help to get the Germantown subcontract 25 agreement signed and to get them signed up</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I don't know if it's the one we use 2 now. It appears to be the one we used then. 3 MR. SCHIRMER: 4 Q. You have seen these types of 5 subcontractor agreements in connection with your 6 work for Eggs America, Inc. in the past? 7 A. I remember us having a subcontractor 8 agreement, but I don't -- I mean, I wasn't -- if 9 this is the form or exactly what it said at the 10 time. It appears to be, but I'm just not 11 familiar with all of it. But, yes, appears to 12 be a subcontractor agreement. 13 Q. That's all on that. You won't have 14 to come back to that one, I promise. You're 15 done. 16 A. Okay. 17 Q. Now, do you have an understanding of 18 what Urner Barry price quotes are? 19 A. I understand -- yes, sir. 20 Q. What is Urner Barry? 21 A. We call them our market reporter. So 22 they report daily a bunch of different items, I 23 think, but we obviously focus on eggs and egg 24 products. But they quote a daily market. 25 Q. Do they have different daily markets?</p>
<p style="text-align: right;">Page 75</p> <p>1 according to Board and Capper-Volstead 2 requirements." Do you see that sentence? 3 A. Yes, sir. 4 Q. Do you know what the requirements 5 that were set up by the board were that she's 6 referring to? 7 A. No, sir. 8 Q. Do you know what the Capper-Volstead 9 requirements that she is referring to there? 10 A. No, sir, I don't. 11 Q. Done. 12 Number 49. 13 (Exhibit 49 marked.) 14 Q. I'm showing you what has been marked 15 as Exhibit 49. It bears Bates number CM00730824 16 through 826. Do you recognize this document, 17 Mr. Hardin? 18 A. I've seen this document before, yes. 19 Q. What is it? 20 A. It says it's an Eggs America, Inc. 21 Subcontractor Agreement. 22 Q. And is this the form that Eggs 23 America uses to sign up its subcontractors? 24 MR. ROBISON: 25 Object to form. Foundation.</p>	<p style="text-align: right;">Page 77</p> <p>1 For example, is this a market for Triple A, for 2 Double A large, Double A medium, Double A extra 3 large, Double A jumbo eggs reported? 4 A. I'm not familiar with a Double A 5 market. I'm familiar with a jumbo, extra large, 6 large, medium, small, that type stuff, breaking 7 stock. 8 Q. Okay. And I want to make sure that 9 that -- is that reported on both a daily and a 10 weekly basis? 11 A. Well, I'm not sure what you mean by 12 weekly. We get it every day that it's open. 13 It's closed today because it's Good Friday, but 14 it's -- but you would get it -- but we would get 15 it daily. 16 Q. I forgot it was Good Friday. My wife 17 will get on me for that. 18 A. Mine already is. 19 MR. ROBISON: 20 Same. 21 MR. SCHIRMER: 22 I'm glad to hear that we're all in 23 the same boat, guys. 24 A. We are. 25 MR. SCHIRMER:</p>

20 (Pages 74 - 77)

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<p style="text-align: right;">Page 78</p> <p>1 All right. Why don't you mark this</p> <p>2 as Exhibit 50.</p> <p>3 (Exhibit 50 marked.)</p> <p>4 Q. Have you seen this document before,</p> <p>5 sir?</p> <p>6 A. It looks like something I prepared.</p> <p>7 I don't remember it specifically, but it looks</p> <p>8 like something I prepared.</p> <p>9 Q. Well, in the from line, it's got</p> <p>10 Jeff Hardin.</p> <p>11 A. Sure.</p> <p>12 Q. And jhardin@cmfoods.com, is that your</p> <p>13 e-mail address?</p> <p>14 A. Sure.</p> <p>15 Q. It's dated October 24, 2003?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Who's Gary Angell?</p> <p>18 A. Gary was the category manager or</p> <p>19 buyer for Albertsons at the time.</p> <p>20 Q. And it says -- you say in this,</p> <p>21 "Gary, I outlined Cal-Maine's proposal for the</p> <p>22 Ft. Worth division of Albertsons." And then</p> <p>23 there's a section that says jumbo, minus .135 of</p> <p>24 the jumbo market; extra large, minus .135 of the</p> <p>25 extra large market; 18-egg extra large -- what</p>	<p style="text-align: right;">Page 80</p> <p>1 Q. You said that the pricing is the</p> <p>2 basis -- in the previous sentence you said:</p> <p>3 "Pricing is basis the Thursday South Central</p> <p>4 Urner Barry for eggs."</p> <p>5 Do you know what percentage of your</p> <p>6 shell egg contracts with your retail customers</p> <p>7 during the period 2000 to 2008 used an Urner</p> <p>8 Barry as the basis for the -- what we call the</p> <p>9 minus, or the discount that was applied?</p> <p>10 A. Substantial -- during this time</p> <p>11 frame, substantially all of them.</p> <p>12 Q. One of the other things -- you said</p> <p>13 that there were some other things that were</p> <p>14 involved. I want you to look right under this</p> <p>15 area that gives the --</p> <p>16 A. Uh-huh.</p> <p>17 Q. -- different types and numbers.</p> <p>18 A. Yes, sir.</p> <p>19 Q. It says this quote is based upon</p> <p>20 carton costs from Albertsons of \$69.00/thousand</p> <p>21 for regular, \$105.00 for 18 egg, and \$75 for</p> <p>22 jumbos. What do you mean there?</p> <p>23 A. Well, Albertsons and many of my</p> <p>24 customers control -- these are -- they're</p> <p>25 control brand cartons. These are their cartons.</p>
<p style="text-align: right;">Page 79</p> <p>1 does it mean when you say minus .135 of the</p> <p>2 jumbo, extra large or large market?</p> <p>3 A. It's a basis number that we use to</p> <p>4 discount or add to the Urner Barry, the Urner</p> <p>5 Barry quote.</p> <p>6 Q. Okay. Let me make sure I understand</p> <p>7 this. So when you're quoting prices to your</p> <p>8 customers, the basis number, at least in this</p> <p>9 case, was a -- it's an Urner Barry market</p> <p>10 quotation?</p> <p>11 A. This represents a discount to</p> <p>12 whatever that quote was, so -- and typically, I</p> <p>13 don't know if it says -- "Pricing is basis the</p> <p>14 Thursday South Central."</p> <p>15 Q. Uh-huh.</p> <p>16 A. So when the market came out on</p> <p>17 Thursdays, I would have taken -- our people</p> <p>18 would have taken that Thursday market and</p> <p>19 discounted it by these basis numbers to figure</p> <p>20 his price.</p> <p>21 Q. So it would change each Thursday --</p> <p>22 A. Yes, sir.</p> <p>23 Q. -- or it could change?</p> <p>24 A. Or it could. Sometimes it may not</p> <p>25 change, but most weeks it probably would.</p>	<p style="text-align: right;">Page 81</p> <p>1 Now, we buy them, but they provide the artwork.</p> <p>2 They tell us how much we're going to pay for</p> <p>3 them. And I'm just reflecting that in my quote</p> <p>4 to him.</p> <p>5 So, in other words, if you go to</p> <p>6 \$79.00 a thousand, then this basis is no good.</p> <p>7 Q. You'd still use Urner Barry, but it</p> <p>8 would be a different --</p> <p>9 A. It would be a different basis number,</p> <p>10 correct, because this is their brand. This</p> <p>11 ain't nothing to do with me.</p> <p>12 Q. I guess I'll ask about that. You say</p> <p>13 this is their brand. What do you mean? Is</p> <p>14 there a term of art for store brands?</p> <p>15 A. Well, store brands would be a good</p> <p>16 one.</p> <p>17 Q. Okay.</p> <p>18 A. But many of my retailers, they</p> <p>19 control their own artwork, they control what</p> <p>20 goes on that artwork, they control the in-lid</p> <p>21 portion of it, what the in-lid is going to say</p> <p>22 of the carton. They do all of that.</p> <p>23 And they just tell me, okay, you're</p> <p>24 going to pay this much for them, and you buy</p> <p>25 them from X company.</p>

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<p style="text-align: right;">Page 82</p> <p>1 Q. And you reflect that price in your</p> <p>2 ultimate pricing.</p> <p>3 A. And I reflect that price here, yes,</p> <p>4 sir. I don't do that in every customer's case,</p> <p>5 but this particular instance I did.</p> <p>6 Q. All right. You said -- the next</p> <p>7 thing is: "Gary, I wanted you to know I've</p> <p>8 tried to get everything possible in 30-day terms</p> <p>9 and can't get it done." And you talk about --</p> <p>10 and I don't want to reread the whole thing, but</p> <p>11 why can't you get 30-day terms for Albertsons in</p> <p>12 this instance?</p> <p>13 You said you couldn't get 30-day</p> <p>14 terms. What does that mean?</p> <p>15 A. At that basis number, it was so cheap</p> <p>16 he didn't deserve 30-day terms. I needed to get</p> <p>17 paid faster than that.</p> <p>18 Q. Fair enough. And at that time</p> <p>19 Albertsons was one of your customers?</p> <p>20 A. Yes, sir. Yes, sir.</p> <p>21 VIDEOGRAPHER:</p> <p>22 Five minutes.</p> <p>23 MR. SCHIRMER:</p> <p>24 Q. You can put that aside.</p> <p>25 A. Okay.</p>	<p style="text-align: right;">Page 84</p> <p>1 Q. -- when you wrote that on</p> <p>2 December 11, 2008.</p> <p>3 A. That's what it appears to be, right.</p> <p>4 Q. There's an e-mail that's included on</p> <p>5 that from Kirby Jones to Daryl Sargent. And it</p> <p>6 says, "change our underage back to Urner Barry</p> <p>7 minus .15 for large eggs and minus .12 for</p> <p>8 small. It would be great if this could be</p> <p>9 effective with yesterday's close."</p> <p>10 I'm trying to understand this</p> <p>11 document. What is this about?</p> <p>12 A. Kirby is with North Star Foodservice.</p> <p>13 I'm sorry. I don't remember. But somebody's</p> <p>14 wanting to change their formulas for some</p> <p>15 reason.</p> <p>16 Q. And you told them to go back to the</p> <p>17 original.</p> <p>18 A. It appears that's right, yes.</p> <p>19 Q. All right. Who is Kirby Jones?</p> <p>20 A. Don't know.</p> <p>21 Q. You don't know?</p> <p>22 A. No, sir.</p> <p>23 Q. Who's North Star Foodservice?</p> <p>24 A. I vaguely remember the name, but it</p> <p>25 looks like something that was -- somebody asked</p>
<p style="text-align: right;">Page 83</p> <p>1 (Exhibit 51 marked.)</p> <p>2 Q. I'm handing you what has been marked</p> <p>3 as Exhibit 51 and messily stapled. It is Bates</p> <p>4 numbered CM00722346 through 348.</p> <p>5 A. Okay.</p> <p>6 Q. What is this document?</p> <p>7 A. I'm sorry. I don't recall.</p> <p>8 Q. At least at the top it appears to be</p> <p>9 an e-mail string --</p> <p>10 A. Right.</p> <p>11 Q. -- that you included. And it says --</p> <p>12 who is Daryl S., do you know? Is that Daryl</p> <p>13 Sargent?</p> <p>14 A. Yes, sir. That's Daryl Sargent.</p> <p>15 Q. Is he employed by Cal-Maine?</p> <p>16 A. Yes, sir.</p> <p>17 Q. What's his job?</p> <p>18 A. He is -- I'm not sure what Daryl's</p> <p>19 title is. He reports through me, but probably</p> <p>20 Regional Sales Manager for Florida.</p> <p>21 Q. And in the -- forwarded as part of</p> <p>22 your message, you say, I believe, "Change it</p> <p>23 back to original for Northstar," is what you</p> <p>24 meant --</p> <p>25 A. Probably.</p>	<p style="text-align: right;">Page 85</p> <p>1 me if this was part of our Eggs America stuff,</p> <p>2 and it could have been. I just don't remember</p> <p>3 it.</p> <p>4 Kirby Jones at U.S. Food Service.</p> <p>5 Okay. So they must have been a division of</p> <p>6 U.S. Foods.</p> <p>7 VIDEOGRAPHER:</p> <p>8 One minute.</p> <p>9 MR. SCHIRMER:</p> <p>10 Done. Take a break.</p> <p>11 VIDEOGRAPHER:</p> <p>12 This is the end of tape number one in</p> <p>13 the video deposition of Jeff Hardin. We are now</p> <p>14 going off the record. The time is 11:11.</p> <p>15 (Off the record.)</p> <p>16 VIDEOGRAPHER:</p> <p>17 This is the beginning of tape number</p> <p>18 two in the video deposition of Jeff Hardin. We</p> <p>19 are now going back on the record. The time is</p> <p>20 11:13 a.m.</p> <p>21 MR. SCHIRMER:</p> <p>22 With a clear tape and my microphone</p> <p>23 properly adjusted, I'm going to mark this</p> <p>24 document.</p> <p>25 (Exhibit 52 marked.)</p>

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<p style="text-align: right;">Page 86</p> <p>1 Q. I'm showing you what has been marked 2 as, I think, Exhibit 52. This document bears 3 Bates numbers SVL_EGGS_109250 through 256. It's 4 a document -- what is it? 5 A. It's that stupid thing I have to sign 6 when I -- it's their supplier agreement -- 7 Corporate Brands Agreement. 8 Q. What does corporate brands mean? 9 A. It's -- well, I'm assuming in their 10 case it means their Albertsons brand egg 11 cartons, Albertsons brand eggs. 12 Q. You said a number of your customers 13 have their own brands, retail customers, at 14 least, in this case, a corporate brand, 15 Albertsons. 16 About what percentage of the shell 17 eggs Cal-Maine sold in the period of 2000 to 18 2008 were for corporate brands, private label 19 store brands? 20 A. I would be speculating, but it's 21 significant. 22 Q. Would it be the majority of the eggs? 23 A. Yeah. It would be a majority. 24 Q. Would you look at -- and you said 25 it's one of the dumb things you have to sign, I</p>	<p style="text-align: right;">Page 88</p> <p>1 October, this would have been, like, November. 2 Reasonably so, yes, sir, I think so. 3 MR. ROBISON: 4 The witness is comparing Exhibit 15 5 and 52. 6 MR. SCHIRMER: 7 Q. Right, 15 and 52. 8 A. This appears to be -- 9 Q. This is the formalization of your 10 proposal. 11 A. Yeah, that's what it appears to be. 12 Q. Okay. Let's take a minute, and I'll 13 ask you about another page. I just want to make 14 sure that's what it is. 15 A. Okay. 16 Q. Now, during the time period 2002 17 through 2008, did most of your customers have 18 this kind of a -- this type of a formal supplier 19 agreement? 20 A. I wouldn't say most, but the big 21 players did, yes. 22 Q. Now, on page 109252, there are a 23 number of terms. I wanted to ask you about a 24 couple of these terms, all right? 25 A. Okay.</p>
<p style="text-align: right;">Page 87</p> <p>1 think. 2 A. No. It's lawyer stuff. 3 Q. Sorry. We do our jobs -- 4 A. I know you do. 5 Q. -- as best we can. 6 If you look at page SVL_EGGS_109255. 7 A. Yes, sir. 8 Q. Is that your signature on the by 9 line? 10 A. Yes, sir. 11 Q. And you're signing on behalf of 12 Cal-Maine Foods? 13 A. Yes, sir. 14 Q. This is a supply agreement dated 15 November 13 -- as of November 13, 2003, between 16 Albertsons and Cal-Maine? 17 A. Yes, sir. 18 Q. The last page, there's an Exhibit A, 19 which I take it is the pricing agreement that 20 typically goes with this? 21 A. That's what it appears to be. 22 Q. And is this consistent with the 23 previous document we discussed that had the 24 minus 1.35 South Central Urner Barry? 25 A. November -- if I proposed it in</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. First of all, it says "Product 2 Reclamation." I'm not certain I understand what 3 that means. Do you have an understanding of 4 what that's about? 5 A. Only from their definition of it. 6 Q. Okay. What is your understanding of 7 what you were agreeing to there? 8 A. That if the federal or the state -- 9 one of the federal or state agencies stop sold 10 eggs at retail or warehouse level, that I would 11 credit them for it. 12 Q. Now, number 13 is "Term." What does 13 that mean -- does that mean that they -- you 14 agree to -- these pricing terms obviously change 15 on a weekly basis, so that's not what they mean 16 by the term of the agreement? 17 A. The market changes weekly. The 18 basis, we're agreeing to -- for one year on the 19 basis, and to renew -- automatically renew 20 afterwards without termination or negotiation, 21 what it means. 22 Q. So they get to keep the same basis, 23 the 1.35 minus under the Urner Barry during the 24 period -- term of the agreement. Is that a 25 correct understanding of this agreement?</p>

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<p style="text-align: right;">Page 90</p> <p>1 A. Yes.</p> <p>2 Q. Was this an exclusive agreement? Did</p> <p>3 they agree only to buy from you in this; do you</p> <p>4 recall?</p> <p>5 A. I couldn't tell you. For a</p> <p>6 particular warehouse, I mean, the reality of it</p> <p>7 is, is they're agreeing for me to supply a</p> <p>8 particular warehouse for them, the Fort Worth</p> <p>9 division, but it wouldn't make sense for me to</p> <p>10 supply something somewhere else for them.</p> <p>11 Q. All right.</p> <p>12 (Exhibit 53 marked.)</p> <p>13 Q. This is a document bearing -- Exhibit</p> <p>14 Number 53, which has just been marked, is a</p> <p>15 document bearing Bates numbers CM00215180</p> <p>16 through 188. I promise that's what it is, even</p> <p>17 if it's sort of partially cut off. What is it?</p> <p>18 A. It's a business review I would have</p> <p>19 prepared for Walmart.</p> <p>20 Q. Would you go to the last page of this</p> <p>21 document, please, Exhibit 53? There appears to</p> <p>22 be looks like a PowerPoint slide almost. It</p> <p>23 says: "Top/Bottom Brand Drivers (Derived</p> <p>24 Importance) Summary." See that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 92</p> <p>1 documents or a study about the egg category.</p> <p>2 Q. Now, there's "Top 12 Derived</p> <p>3 Importance -- Egg Category." And number one is:</p> <p>4 "Good value for the money." See that?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Do you have an understanding what .5</p> <p>7 means?</p> <p>8 A. No, sir, I don't recall.</p> <p>9 Q. So you don't have an understanding of</p> <p>10 what any of these .5, .36, in each of these</p> <p>11 12 derived importance are?</p> <p>12 A. I probably did at the time, but I</p> <p>13 don't recall now what they meant.</p> <p>14 Q. All right. There's also some</p> <p>15 handwriting on this document.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that your handwriting?</p> <p>18 A. I don't recall. It doesn't appear to</p> <p>19 be mine, but I just don't recall.</p> <p>20 Q. All right. If you'll look back at</p> <p>21 page -- the second page of the document, number</p> <p>22 181, what is that?</p> <p>23 A. It's a recap of the volume in cases</p> <p>24 per week that we sold to Walmart, Cal-Maine sold</p> <p>25 to Walmart.</p>
<p style="text-align: right;">Page 91</p> <p>1 Q. Then it gives a list of what top</p> <p>2 drivers are and bottom drivers are. What do you</p> <p>3 mean by brand drivers?</p> <p>4 A. I don't have a recollection of this</p> <p>5 particularly. This was prepared by</p> <p>6 International Insights. And it was a study that</p> <p>7 Walmart paid for, and I just -- and shared with</p> <p>8 their egg producers, and I clipped it to talk to</p> <p>9 Gary about.</p> <p>10 Q. Do you remember why you included this</p> <p>11 in this --</p> <p>12 A. I don't remember exactly why. No,</p> <p>13 sir, I don't. I was probably trying to make a</p> <p>14 point about something, but I don't recall what</p> <p>15 it would have been.</p> <p>16 Q. I can only ask you what you remember,</p> <p>17 Mr. Hardin.</p> <p>18 If you look at the previous document,</p> <p>19 was that also prepared for Walmart? It's the</p> <p>20 previous page on this document, 187. It says:</p> <p>21 "Value is the most important driver."</p> <p>22 A. As I recall it -- again, it's the</p> <p>23 International Insights study. And I want to</p> <p>24 think that that was prepared by Walmart -- or</p> <p>25 they solicited this group to prepare them some</p>	<p style="text-align: right;">Page 93</p> <p>1 Q. Let me make sure I understand that.</p> <p>2 There's a listing of, I guess, distribution</p> <p>3 centers, Pageland, Los Lunas, Opelika, average</p> <p>4 2'04, average 2'03, average 2'05.</p> <p>5 A. Yes, sir.</p> <p>6 Q. Okay. And those numbers next to them</p> <p>7 are the numbers that were sold on an average</p> <p>8 weekly basis to Walmart during that period of</p> <p>9 time?</p> <p>10 A. For those particular DCs, yes, sir.</p> <p>11 Now, what I'm distributing to him is</p> <p>12 the growth from '03 to '05 of our business with</p> <p>13 them. That's all I'm doing.</p> <p>14 Q. Okay. There's some handwriting at</p> <p>15 the bottom.</p> <p>16 A. Uh-huh.</p> <p>17 Q. Is that yours?</p> <p>18 A. That appears to be mine, yes.</p> <p>19 Q. Can you read the first sentence and</p> <p>20 tell me what it says?</p> <p>21 A. It says: "Foam for</p> <p>22 Pageland/Hammond/Brundage."</p> <p>23 Q. Do you remember what that was about?</p> <p>24 A. It's clear enough to me that I was</p> <p>25 probably -- that was probably my notes to</p>

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<p style="text-align: right;">Page 94</p> <p>1 myself. This would have been probably my copy, 2 and I was just making myself some sales notes as 3 to what I wanted to accomplish. 4 Q. What does "help in Florida" mean? I 5 assume that's what you were writing. 6 A. Yeah. Help in Florida. I don't 7 recall specifically what kind of help I was 8 looking for, but I had something on my mind at 9 the time. 10 Q. Would you look at the third page. It 11 says: "SCORECARD HIGHLIGHTS AND WEAKNESSES." 12 A. Yes, sir. 13 Q. What does "In-Stock percentage up 14 slightly to 98.71%" mean? 15 A. Walmart produces and gives us access 16 to what's called a supplier score card, which is 17 185. 18 Q. Okay. 19 A. And instead of him having to go and 20 look through the score card, I was just laying 21 out for him what his number said. That's all it 22 was. 23 Q. Now, what is the -- when it says net 24 margin -- the -- one, two, three -- fourth one 25 down -- well, let's go to the third one down.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. They're designed for a computer. 2 They're not designed to print. And so instead 3 of us fiddling around, I was just highlighting 4 them for him. 5 Q. There's two other things. What did 6 you mean when you said: "Co-ops count down 7 33%"? Do you have an understanding of what that 8 meant? 9 A. A co-op is like a credit memo, when 10 they need credit for something. And it's a real 11 pain to do in the Walmart system, so the fewer 12 of them you have because you didn't foul up 13 invoicing or you didn't foul up the eggs, it was 14 the benefit to everybody that you didn't have to 15 deal with it. 16 So the number must be down 33 percent 17 year over year, which was an important tracking 18 number to Walmart. 19 Q. Now, the co-ops, is that like 20 cooperative pricing arrangements? 21 A. No, sir. They call them co-ops, but, 22 for instance, we were looking -- that document 23 we were looking at earlier where we were talking 24 about federal stop sales. 25 Q. Uh-huh.</p>
<p style="text-align: right;">Page 95</p> <p>1 It says: "Initial margin up .73%." Do you have 2 an understanding what that means? 3 A. No, sir. 4 Q. The next one down says: "Net margin 5 of 4.22% to 15.55%." Do you have an 6 understanding of what that means? 7 A. Well, again, it all comes off of 8 their report. And those are things that they 9 tracked that were important to Walmart, and so I 10 was just highlighting them from our score card. 11 Q. Is that Walmart's net margin that 12 you're speaking of? 13 A. Yes, sir. 14 Q. And I see on the fifth one down, 15 you're saying: "Gross margin return on 16 investment up .67%" -- 17 A. Yes, sir. 18 Q. -- "to 12.9%"? 19 A. Yes, sir. 20 Q. And whose investment is that? 21 A. Again, this comes right off of their 22 sheet. And all I'm doing is recapping what 23 their reports say, so you don't have to -- these 24 things are very hard to see. 25 Q. I agree.</p>	<p style="text-align: right;">Page 97</p> <p>1 A. Okay. Well, in the Walmart world, 2 it's very difficult to get them credit. And the 3 way they receive their credit is by writing 4 what's called a co-op. They call it a co-op. 5 And so they send it electronically to 6 me, I approve it, and then they deduct it from a 7 check. They won't deduct something unless I 8 approve it. That's all a co-op was. 9 Q. So it's like -- I would call it a 10 debit or a credit memo? 11 A. Correct. Exactly. So they just 12 happen to call them co-ops. I don't know why. 13 Q. I'm done with that. 14 (Exhibit 54 marked.) 15 Q. I'm showing you what has been marked 16 as Exhibit 54. It bears Bates numbers 17 CM00215496 through 518. 18 A. Yes, sir. 19 Q. What is this? 20 A. It's the robust version of the 21 Albertsons agreement. 22 Q. That's an interesting way of 23 describing this. 24 A. It's just way more detailed. 25 Q. There's some things I don't</p>

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<p style="text-align: right;">Page 98</p> <p>1 understand.</p> <p>2 A. Okay.</p> <p>3 Q. There's a section called 2.9 in this</p> <p>4 agreement, if I can get to it. It's called</p> <p>5 "Most Favored Purchaser."</p> <p>6 A. What page are you on?</p> <p>7 Q. Page 6 of the document, which is</p> <p>8 Cal-Maine 00215501.</p> <p>9 I can read the legalese. What is it</p> <p>10 you're trying to do in this provision?</p> <p>11 A. I don't know what they're trying to</p> <p>12 accomplish. It's probably -- my reading -- and</p> <p>13 this is their document, not mine -- so I'm</p> <p>14 assuming that they're trying to tell me that I'm</p> <p>15 not going to give somebody a competitive</p> <p>16 advantage over them, is the way I would --</p> <p>17 Q. They get the best price --</p> <p>18 A. Well, they get the most favored</p> <p>19 price. There's a lot more to it than just best</p> <p>20 price.</p> <p>21 Q. Okay. And on page 12 of the</p> <p>22 document, which is the Bates number ending 507,</p> <p>23 the term is a two-year term?</p> <p>24 A. Yes, sir. Looks like it.</p> <p>25 Q. And is that for the pricing formula</p>	<p style="text-align: right;">Page 100</p> <p>1 Mid West Urner Barry Market."</p> <p>2 A. Yes, sir.</p> <p>3 Q. "Pricing for the following week will</p> <p>4 be set using the Thursday Large, Urner Barry,</p> <p>5 Mid West quote."</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did I read that correctly?</p> <p>8 A. Yes, sir.</p> <p>9 Q. That means that you will -- is my</p> <p>10 understanding correct that you will give them a</p> <p>11 price based upon the Thursday Large Urner Barry</p> <p>12 quote that takes into account the pricing</p> <p>13 formula that you just described?</p> <p>14 MR. ROBISON:</p> <p>15 Object to form.</p> <p>16 A. Same as we were talking about with</p> <p>17 Albertsons.</p> <p>18 MR. SCHIRMER:</p> <p>19 Q. Okay. The next line is the one --</p> <p>20 "All non-specialty eggs pricing will remain</p> <p>21 fixed for the contract period." Does that mean,</p> <p>22 sir, that the formula will be used throughout</p> <p>23 the contract period?</p> <p>24 A. "All non-specialty eggs will remain</p> <p>25 fixed for the" -- appears to me -- yes, it says</p>
<p style="text-align: right;">Page 99</p> <p>1 listed on Exhibit A, which is also 215515?</p> <p>2 A. 515?</p> <p>3 Q. Yes, sir.</p> <p>4 A. Probably so, yes, sir.</p> <p>5 Q. Now, on 515, it has pricing. It</p> <p>6 says, "Pricing (per dozen)," and "Cost," and</p> <p>7 then cost equals, and there's a formula there.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Would you explain that formula for</p> <p>10 me?</p> <p>11 A. Sure. They want to take the Midwest</p> <p>12 Urner Barry large market, and they want to</p> <p>13 either discount it or add to it, then add</p> <p>14 freight -- add packaging and add freight.</p> <p>15 Again, it was one of those things, it</p> <p>16 wouldn't be -- it was one of those things where</p> <p>17 they control the carton, the packaging piece and</p> <p>18 how much that package was going to cost me. And</p> <p>19 so they went about approaching this a little</p> <p>20 differently than an Albertsons would have.</p> <p>21 Q. Okay. There's something that says --</p> <p>22 it's called "Baseline Pricing."</p> <p>23 A. Okay.</p> <p>24 Q. And it says here: "Large, Extra</p> <p>25 Large and Jumbo eggs will be pegged to the Large</p>	<p style="text-align: right;">Page 101</p> <p>1 "non-specialty," so it's talking about these</p> <p>2 Lucerne brands up here.</p> <p>3 Q. There's something called "Lump Sum."</p> <p>4 A. Uh-huh.</p> <p>5 Q. "Supplier shall make a lump sum</p> <p>6 payment of One Hundred Thousand Dollars at</p> <p>7 inception which shall be a non-refundable</p> <p>8 signing bonus and shall be considered fully</p> <p>9 earned upon the signing of the agreement."</p> <p>10 A. Uh-huh.</p> <p>11 Q. What is that?</p> <p>12 A. Negotiations.</p> <p>13 Q. Is it payment from you to them?</p> <p>14 A. Cal-Maine to Safeway, yes.</p> <p>15 Q. You had to pay them \$100,000 signing</p> <p>16 bonus.</p> <p>17 A. Yes, sir.</p> <p>18 Q. And "Net 14 Days" means they've got</p> <p>19 to pay in you 14 days.</p> <p>20 A. Yes, sir.</p> <p>21 Q. And on the previous page -- just 14,</p> <p>22 one back, have a look at it -- is that your</p> <p>23 signature on behalf of Cal-Maine?</p> <p>24 A. Yes, sir.</p> <p>25 Q. And it's dated April 9, 2009?</p>

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<p style="text-align: right;">Page 102</p> <p>1 A. Yes, sir.</p> <p>2 Q. Okay. I don't have any more</p> <p>3 questions about that document.</p> <p>4 (Exhibit 55 marked.)</p> <p>5 Q. I'm showing you what has been marked</p> <p>6 as Exhibit 55. This is a single-page document</p> <p>7 bearing Bates number CM00468587.</p> <p>8 A. Okay.</p> <p>9 Q. What is this document, Mr. Hardin?</p> <p>10 A. It looks like a forward from me to</p> <p>11 Dolph just explaining what I'm doing to try to</p> <p>12 win the Kroger business in Memphis.</p> <p>13 Q. Do you recall whether you won the</p> <p>14 Kroger business in Memphis with this bid?</p> <p>15 A. I don't think I did, no, sir.</p> <p>16 Q. And it says --</p> <p>17 A. Oh, I'm sorry. Looking at the date,</p> <p>18 no, I did not win the business.</p> <p>19 Q. Thank you. It says: "Attached is</p> <p>20 the new program for the Dillons division and</p> <p>21 pricing for Memphis." Was the Dillons division</p> <p>22 a division of Kroger at the time?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And did you have the business --</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Showing what you has been marked as</p> <p>2 Exhibit 56. It is a single-page document</p> <p>3 bearing Bates stamp number CM00561399.</p> <p>4 A. Okay.</p> <p>5 Q. What is it?</p> <p>6 A. Looks like an award letter to me from</p> <p>7 Safeway. I don't remember it specifically,</p> <p>8 but --</p> <p>9 Q. What was the Randalls division?</p> <p>10 A. That was what -- the Safeway division</p> <p>11 in Houston is called Randalls, and the Safeway</p> <p>12 division in Dallas is called Tom Thumb.</p> <p>13 Q. Looks like you did a little better</p> <p>14 with them than you did in Memphis this time.</p> <p>15 A. Yeah. Evidently so.</p> <p>16 Q. Yeah.</p> <p>17 A. You know, we've had the Safeway</p> <p>18 business in Texas for a long time.</p> <p>19 Q. Okay. Do you remember when you first</p> <p>20 got the Safeway business in Texas?</p> <p>21 A. We acquired it.</p> <p>22 Q. About when? Before 2000?</p> <p>23 A. I don't recall. We had an</p> <p>24 acquisition, Smith Farms, but I don't know when</p> <p>25 that acquisition was.</p>
<p style="text-align: right;">Page 103</p> <p>1 Q. -- of Dillons at the time?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Now, the second paragraph says: "You</p> <p>4 will notice we have reduced the Dillons price by</p> <p>5 1.5 cents per dozen to reflect the straight</p> <p>6 south central quote."</p> <p>7 A. Yes, sir.</p> <p>8 Q. What does that mean?</p> <p>9 A. I don't remember, but I can tell you</p> <p>10 that we were probably on a split of the Midwest</p> <p>11 and South Central quote, and it was hard to keep</p> <p>12 up with. So we flipped a South Central quote</p> <p>13 and gave him a cent-and-a-half-a-dozen allowance</p> <p>14 for doing so.</p> <p>15 Q. And by South Central quote, that's</p> <p>16 using the Urner Barry South Central quote --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- instead of the combination</p> <p>19 Midwest?</p> <p>20 A. Mid West, correct. Just to make life</p> <p>21 easy.</p> <p>22 Q. Certainly be easier.</p> <p>23 A. I'm not good at averages.</p> <p>24 Q. Me neither.</p> <p>25 (Exhibit 56 marked.)</p>	<p style="text-align: right;">Page 105</p> <p>1 Q. I'm sorry?</p> <p>2 A. Acquisition.</p> <p>3 Q. Oh.</p> <p>4 A. We acquired a company.</p> <p>5 Q. What was the company?</p> <p>6 A. Called Smith Farms, but I don't</p> <p>7 recall when.</p> <p>8 Q. The reason I ask is if I get the name</p> <p>9 of the farm, then I can sort of figure out when</p> <p>10 that happened.</p> <p>11 And the benchmark for that --</p> <p>12 apparently, a Houston division --</p> <p>13 A. That's what it says, yes, sir.</p> <p>14 Q. -- was the Medium Midwest Urner Barry</p> <p>15 market? "Please note: All future business" --</p> <p>16 A. Yes, sir. "Will be based on the</p> <p>17 Large and Medium Midwest Urner Berry." They</p> <p>18 misspelled Barry.</p> <p>19 Q. What does "we will benchmark the</p> <p>20 shrink for eggs" mean?</p> <p>21 A. Back in an earlier document, they</p> <p>22 said that they'd benchmark it at 6 percent;</p> <p>23 anything above 6 percent shrink, we expect you</p> <p>24 to pay for.</p> <p>25 (Exhibit 57 marked.)</p>

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<p style="text-align: right;">Page 106</p> <p>1 Q. The reporter is marking another 2 document as Exhibit 57. It is a -- I think it's 3 three pages. It's only one copy. It's a 4 three-page document bearing Bates number 5 CM00416543 through 45. It is dated April 17, 6 2001. 7 A. Okay. 8 Q. What is this document? 9 A. I don't know what these last two are, 10 but the first one is a memo from Dolph telling 11 me about a General Managers' meeting that's 12 upcoming. 13 Q. What were the General Managers' 14 meetings? 15 A. When we brought in all of our General 16 Managers, or ones that ran our operations, to 17 review their performance results. 18 Q. Did you attend those meetings? 19 A. Yes, sir. 20 Q. On a regular basis? 21 A. Yes, sir. 22 Q. Okay. You might have missed one or 23 two. I'm not saying you had to attend all of 24 them, but -- 25 A. Yes, sir, but on a regular --</p>	<p style="text-align: right;">Page 108</p> <p>1 you -- 2 A. I don't know. 3 Q. The second document, which is dated 4 May 31, 2001, which is obviously after that, do 5 you have an understanding what that is? 6 A. No, sir, I don't. 7 Q. Do you know what the UEP marketing 8 committee was? 9 A. Part of it. 10 Q. What was your understanding of what 11 it was? 12 A. I don't have an understanding of what 13 it was. I just heard of it, the marketing 14 committee. 15 Q. All right. Do you know what UEA -- 16 the third page on this says: "United Egg 17 Association." 18 A. That's a new one on me. I do not -- 19 I have never heard of United Egg Association. 20 I'm not sure what that is. 21 Q. Okay. Fair enough. 22 The reporter is now marking a 23 document as Exhibit 58. 24 (Exhibit 58 marked.) 25 Q. This is document bearing Bates label</p>
<p style="text-align: right;">Page 107</p> <p>1 Q. It's part of your job. 2 A. Yes, sir. 3 Q. It says: "At a later date" -- were 4 materials passed out in advance of these 5 meetings, the General Managers' meetings, for 6 the meetings? 7 A. In advance of? 8 Q. Uh-huh. 9 A. Typically, no. 10 Q. Would materials be passed out at the 11 meeting? 12 A. At the meeting. 13 Q. And what would those materials 14 consist of? 15 A. Our performance books, management 16 book, all the locations under tab, and we would 17 look at the numbers, performance numbers. 18 Q. Okay. 19 A. But these three documents would not 20 have come together. 21 Q. They were -- I'm just telling you I 22 did it the way they were produced. 23 A. Okay. 24 Q. I don't know why they're together. I 25 was just wondering if that's something that</p>	<p style="text-align: right;">Page 109</p> <p>1 CM00218881 through 888. 2 A. Okay. 3 Q. Other than your picture on page 887, 4 have you ever seen this document before, sir? 5 A. Sure. I've seen this before. 6 Q. What is it? 7 A. It says it's a Consolidated Statement 8 of Operations for a 13-week period. 9 Q. Maybe you can help me on some of the 10 terms that are going on here. 11 A. I doubt it, but I'll try. 12 Q. Please -- we'll go to the first page. 13 As we go down, there's something about 14 three-quarters of the way down the left-hand 15 side. It says: "Net P&L CENTS/LAYER," and then 16 it has numbers for November 29, 2008; December 17 1, 2007. Do you have an understanding of what 18 those numbers represent, sir? 19 A. What number are you looking at? 20 Q. It's net P&L cents per layer. 21 A. I'm not familiar with exactly what 22 that represents, no. 23 Q. Will you go down a little further to 24 where it -- there's -- at the third line from 25 the bottom --</p>

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<p style="text-align: right;">Page 110</p> <p>1 A. Yes, sir.</p> <p>2 Q. -- I believe it says: "Price back of</p> <p>3 market." Do you see that?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Then there's some numbers next to it</p> <p>6 that are circled.</p> <p>7 A. Yes, sir.</p> <p>8 Q. I didn't circle them.</p> <p>9 A. That's all right.</p> <p>10 Q. 8.81 under the November 29, 2008,</p> <p>11 column.</p> <p>12 A. Yes, sir.</p> <p>13 Q. And 17.72 in the December 1, 2007,</p> <p>14 column.</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you have an understanding what</p> <p>17 that means?</p> <p>18 A. Yes, sir.</p> <p>19 Q. What does it mean?</p> <p>20 A. It means the discount for all eggs</p> <p>21 that we sold to a market, whatever we used as a</p> <p>22 benchmark market, which probably was the</p> <p>23 Southeast Large, since most of our business was</p> <p>24 in the southeast.</p> <p>25 So in '08, we would have averaged</p>	<p style="text-align: right;">Page 112</p> <p>1 yeah --</p> <p>2 MR. ROBISON:</p> <p>3 So I don't want any confusion.</p> <p>4 A. -- but it's a 13-week period.</p> <p>5 MR. ROBISON:</p> <p>6 I'm not trying to mess you up, but I</p> <p>7 just want it to be clear.</p> <p>8 MR. SCHIRMER:</p> <p>9 It's okay. I don't mind if you</p> <p>10 clarify stuff on the record.</p> <p>11 Q. Then let's go to the next page. I</p> <p>12 have the same question about this, I guess,</p> <p>13 except for this is for the 26-week period ended</p> <p>14 November 29, 2008.</p> <p>15 That price back of market is the</p> <p>16 average discount, effectively, to whatever your</p> <p>17 benchmark market. It's the third down from the</p> <p>18 bottom -- third up from the bottom, excuse me.</p> <p>19 A. Okay.</p> <p>20 Q. And it says: "Price back of market."</p> <p>21 That's the average discount for those two time</p> <p>22 periods?</p> <p>23 A. That's what it appears to be, yes,</p> <p>24 sir. So one is a 26-week period, and one is a</p> <p>25 13.</p>
<p style="text-align: right;">Page 111</p> <p>1 selling our eggs at 8.81 cents under the market.</p> <p>2 And in '07, we would have averaged selling them</p> <p>3 at 17.72 back of the market for all eggs.</p> <p>4 Q. And that would include all your</p> <p>5 customers?</p> <p>6 A. Yes, sir.</p> <p>7 Q. So that would include those for</p> <p>8 who -- like Albertsons, you went minus .13, or</p> <p>9 13 percent --</p> <p>10 A. Yes, sir.</p> <p>11 Q. -- and others where you were less?</p> <p>12 A. Yes, sir. Others that were what, I'm</p> <p>13 sorry?</p> <p>14 Q. That would be like .6, obviously, if</p> <p>15 you're going to get 8 percent of the market.</p> <p>16 You can't have everybody being sold at 13</p> <p>17 percent of the market.</p> <p>18 A. Correct. That's all products, all</p> <p>19 customers, all everything.</p> <p>20 MR. ROBISON:</p> <p>21 Mark, just for clarification, the</p> <p>22 heading says it's the 13-week period ending on</p> <p>23 those dates, and I think he was -- he might have</p> <p>24 thought it was the entire year.</p> <p>25 A. Oh, I might have said year-ending,</p>	<p style="text-align: right;">Page 113</p> <p>1 Q. I assume, on these two pages, you</p> <p>2 don't know what's included in the net cost of</p> <p>3 sales, which is the second entry?</p> <p>4 A. I'm not an accountant so --</p> <p>5 Q. Who would know that?</p> <p>6 A. Well, obviously, our financial folks</p> <p>7 would know. And Dolph would understand it.</p> <p>8 Q. Okay. Would you have a look at just</p> <p>9 a little bit up from here. It's something</p> <p>10 called "Average Large Market." It's on both of</p> <p>11 these pages.</p> <p>12 A. Yes, sir.</p> <p>13 Q. Let's start on the first page, 881.</p> <p>14 It says average large market, apparently for the</p> <p>15 13 week period ending November 29, 2008.</p> <p>16 A. Yes, sir.</p> <p>17 Q. And then underneath it there's 129.7.</p> <p>18 And under December 1, there's 136.0. Do you</p> <p>19 have an understanding of what those represent?</p> <p>20 A. You're just talking about the 129.7</p> <p>21 and the 110.63?</p> <p>22 Q. Well, I'll ask you about --</p> <p>23 A. Okay.</p> <p>24 Q. -- the 110. I want to know about</p> <p>25 129.7 and 136, which is next to the 129.7.</p>

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<p style="text-align: right;">Page 114</p> <p>1 A. Sure. It means that for that 13-week 2 period, the market averaged a dollar 29.7 cents. 3 And for the same period the year prior is it 4 averaged a dollar 36 a dozen. And then it 5 was -- so it was 6.3 cents cheaper in '08 than 6 it was in '07, the market. 7 Q. Okay. I'm sorry. Go ahead. 8 A. Yeah, the market. 9 Q. And then right below it, you were 10 trying to tell me the answer to my next 11 question. The breakeven point, what is that? 12 Breakeven 110.63, 107.03? 13 A. I can't tell you all the elements 14 that go into it because it's a moving number 15 based on the markets, but it represents what our 16 break-even would have been given that particular 17 market. 18 Q. Is this a document that, to your 19 understanding, is prepared by Cal-Maine in the 20 ordinary course of business? 21 A. I'm sure it is. 22 Q. And are these prepared on a periodic 23 basis, to your understanding? 24 MR. ROBISON: 25 Object to form.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yes. 2 Q. Have you sold into California over 3 the last, say, 14 years? 4 A. Yes. 5 Q. You said, "today." Are you planning 6 not to sell to California in the future? 7 A. Don't know yet. 8 Q. Okay. Yesterday, we looked at a 9 couple of internal documents, and I wonder if we 10 could look at them again today. 11 I would like you, if you would, would 12 you take a look at Exhibit 19? 13 MR. SCHIRMER: 14 For those of you who don't have it, 15 Exhibit 19 is Cal-Maine 00272534 through 552. 16 A. Okay. 17 Q. Do you have an understanding of what 18 this document is? 19 A. Yes, sir. 20 Q. What is it? 21 A. It starts out as a request from Dolph 22 to our General Managers at Bremen asking them to 23 do a customer analysis. 24 Q. Now, I see you're cc'd on this. Look 25 at page 3, the third page of the document.</p>
<p style="text-align: right;">Page 115</p> <p>1 A. That's our financial results. I'm 2 sure they are. 3 MR. SCHIRMER: 4 Q. Look at the last page of this 5 document. 6 A. Okay. 7 Q. I'm sorry it's not in color. It 8 helps me, it won't help you. It gives a list of 9 the locations, of Cal-Maine's locations. 10 There are two things on this I wanted 11 to ask you about. One of the things says: 12 "White states indicate Cal-Maine's major market 13 areas." I'm not certain I understand what that 14 means by major market areas. 15 MR. ROBISON: 16 Object to form. 17 MR. SCHIRMER: 18 Q. Do you have an understanding as to 19 what that means? 20 A. Not with that particular terminology, 21 no. 22 Q. Does Cal-Maine sell into California 23 now? 24 A. Yes. Today? 25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 117</p> <p>1 A. Yeah. 2 Q. You're cc'd on this request? 3 A. Uh-huh, uh-huh. 4 Q. Would you have received this customer 5 analysis when they were done? Do you, as an 6 ordinary course of business, receive customer 7 analysis when they're done? Let's ask that 8 question. 9 A. Yes. 10 Q. Okay. 11 A. Probably not then, but now, yes. 12 Q. When would you have started receiving 13 those? 14 A. I'm sorry. I don't know. Things 15 have changed since '03. 16 Q. You said you probably wouldn't have 17 received them in what looks to be September or 18 sometime thereafter in '03. Who would have 19 received these customer analysis in September of 20 '03? 21 MR. ROBISON: 22 Object to form. 23 MR. SCHIRMER: 24 Q. If you know. 25 A. I don't know. Probably Dolph, but I</p>

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<p style="text-align: right;">Page 118</p> <p>1 don't know.</p> <p>2 Q. Would you look at the fourth page of</p> <p>3 the document?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Do you know whose handwriting that</p> <p>6 is?</p> <p>7 A. No, sir.</p> <p>8 Q. Now, would you go to the fifth page</p> <p>9 of the document? It ends in the Bates numbers</p> <p>10 539.</p> <p>11 A. Okay.</p> <p>12 Q. Do you have any understanding as</p> <p>13 whose handwriting might be on this?</p> <p>14 MR. ROBISON:</p> <p>15 One more page.</p> <p>16 A. I'm sorry.</p> <p>17 MR. SCHIRMER:</p> <p>18 Q. That one, too. There's handwriting</p> <p>19 on that, but I'm not going to ask.</p> <p>20 A. No, sir.</p> <p>21 Q. Okay. Now, if you look at the --</p> <p>22 just turn to the next page after, one more.</p> <p>23 A. Okay.</p> <p>24 Q. Please -- I want to make sure I</p> <p>25 understand this. I thought I understood this</p>	<p style="text-align: right;">Page 120</p> <p>1 happened to notice on the sales sheet, it said</p> <p>2 Robert Orr Sysco, so that would have been one of</p> <p>3 my guys. Somebody had wrote in hand Robert Orr,</p> <p>4 so --</p> <p>5 Q. Okay. I get real confused. Would</p> <p>6 you please take a look at CM00272543?</p> <p>7 A. My number's cut off, so is it Robert</p> <p>8 Orr?</p> <p>9 Q. No. It's --</p> <p>10 A. Who is it?</p> <p>11 MR. ROBISON:</p> <p>12 Kroger in Memphis, Tennessee --</p> <p>13 A. Oh, Kroger, Memphis.</p> <p>14 MR. ROBISON:</p> <p>15 -- is the customer at the top.</p> <p>16 MR. SCHIRMER:</p> <p>17 Q. Here, I wish you could keep that one,</p> <p>18 but I'll just --</p> <p>19 A. That's okay. That's okay. I'll find</p> <p>20 it. Kroger Memphis. Okay. This one's marked</p> <p>21 254 on mine.</p> <p>22 Q. Okay. The actual number is 2543.</p> <p>23 Would that have been one of your customers at</p> <p>24 the time?</p> <p>25 A. No, sir.</p>
<p style="text-align: right;">Page 119</p> <p>1 yesterday, and now I want to make sure I do. If</p> <p>2 you look down almost to the box at the bottom --</p> <p>3 A. Yes, sir.</p> <p>4 Q. -- there's -- one, two, three -- four</p> <p>5 lines up, there's the "Price Discount to</p> <p>6 Market."</p> <p>7 A. Yes, sir.</p> <p>8 Q. And over next to it is .145, or 14.5</p> <p>9 percent, I guess, cents, M.W. Is that</p> <p>10 indicating that for Customer Buchanan out of</p> <p>11 this particular location, Cal-Maine was</p> <p>12 providing a price discount to market of .15 --</p> <p>13 A. .145.</p> <p>14 Q. -- .145 cents?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And that's based upon the Midwest</p> <p>17 Urner Barry quotation?</p> <p>18 A. That's what it appears to say, yes.</p> <p>19 Q. That was not one of the locations you</p> <p>20 had sales responsibility for at the time, I take</p> <p>21 it, Buchanan in Kentucky?</p> <p>22 A. Well, it didn't matter the location.</p> <p>23 It mattered the customer.</p> <p>24 Q. Okay.</p> <p>25 A. So I probably had some. I just</p>	<p style="text-align: right;">Page 121</p> <p>1 Q. Whose customer would that have been?</p> <p>2 A. I don't recall who would have had</p> <p>3 that at the time. I really don't. I mean, I</p> <p>4 was obviously chasing it at some point because</p> <p>5 there was a memo earlier where I was negotiating</p> <p>6 with -- was it Gary Stall or Tom Klump, I can't</p> <p>7 remember who -- to try to win the Kroger Memphis</p> <p>8 business. But as far as management</p> <p>9 responsibility, I don't recall.</p> <p>10 Q. That's the reason I was asking. So</p> <p>11 it shows an actual volume there at the top --</p> <p>12 one, two, three -- four down, volume 6,500. And</p> <p>13 it says: "Edwards had this customer last year,"</p> <p>14 right up in the box up there.</p> <p>15 A. Okay.</p> <p>16 Q. Who was Edwards?</p> <p>17 A. Edwards was one of our locations here</p> <p>18 in Mississippi.</p> <p>19 Q. Okay. Were you responsible for stuff</p> <p>20 coming out of Mississippi at that time?</p> <p>21 A. Again, it was more customer based</p> <p>22 than -- some geographic, some by customer, but I</p> <p>23 don't remember exactly who was responsible for</p> <p>24 Kroger at the time.</p> <p>25 Q. Okay. And the price basis there, if</p>

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<p style="text-align: right;">Page 122</p> <p>1 you go price discount to market, in the same 2 spot, is .146. I take it, that's minus .146 off 3 the South Central market? 4 A. I'm assuming that's what that means, 5 yes, sir. 6 Q. At that time, on the next page -- 7 turn the next page, it's a company called 8 Germantown Egg. Who is Germantown Egg? 9 A. Germantown was an egg producer in 10 Germantown, Illinois. 11 Q. Why would they have been listed on a 12 customer analysis sheet if they're an egg 13 producer? 14 A. We must have been selling them some 15 eggs. 16 Q. Please turn to the next page just a 17 minute. It says at the top: "McLane 18 Cumberland." What was McLane Cumberland at the 19 time? 20 A. It's McLane Wholesale, out of Temple, 21 Texas. And their district -- division 22 distribution center was at Nicholasville, 23 Kentucky, and they call it Cumberland. I'm 24 assuming, for the Cumberland River. There's a 25 Cumberland Mountain on up. But that's what they</p>	<p style="text-align: right;">Page 124</p> <p>1 numbers, with a Bates number that starts at 2 CM00201600. 3 A. Okay. 4 Q. Do you know what this document is? 5 A. This is not a -- 6 Q. Is it a combination of a set -- 7 A. It's a bunch stuff. This is not a 8 common document. This is just something that 9 got copied out of a bunch of files somewhere, 10 but none of this makes any sense at all. 11 Q. Okay. Let's ignore the first three 12 pages for a minute. 13 A. Okay. 14 Q. Let's go to page four, which -- the 15 fourth page of the document, which starts with 16 Charlie. 17 A. Charlie, okay. 18 Q. And then there's -- the next document 19 is the General Managers' meeting. Okay. And 20 there's another document -- I like this, where 21 this particular page is on the back of a packet 22 of documents labeled "General Managers' 23 Meeting." 24 A. Okay. 25 Q. It says: "Charlie, here's a list of</p>
<p style="text-align: right;">Page 123</p> <p>1 call it, McLane Cumberland. 2 Q. That is a wholesaler of eggs? 3 A. Yes, sir. 4 Q. Do you know who McLane's customers 5 are? 6 A. I know some of them. 7 Q. Who are some of them? 8 A. Walgreen, Dollar General. The one 9 out of North Carolina -- they're -- the little 10 smaller retail outlets is typically their 11 customers. 7-Elevens, convenience stores. 12 That's what they specialize in. 13 Q. That's all I have on that. 14 Take a look at Exhibit 20. 15 A. Okay. 16 Q. Do you have an understanding of what 17 this document is? 18 A. Yes, sir. 19 Q. What is it? 20 A. It's probably just a variation of 21 what we just looked at. 22 Q. Okay. Please look at Exhibit 21. 23 Take a look at this. It's a little longer. 24 A. Okay. 25 Q. This is a document bearing Bates</p>	<p style="text-align: right;">Page 125</p> <p>1 those attending the GM meeting who will need 2 books." 3 A. Uh-huh. 4 Q. Who's Charlie? 5 A. He's probably referring to Charlie -- 6 Q. Randle? 7 A. No. Collins. 8 Q. Collins. Okay. And is he in your 9 Accounting Department? 10 A. He is retired now. 11 Q. He was in the Accounting Department? 12 A. Yes. 13 Q. It says here's a list of those who 14 will need books. Now, a little while ago you 15 said you got a big list of materials. Is that 16 what this is talking about when it says "who 17 will need books"? 18 A. Somebody's just telling Charlie, 19 we're going to need books for these people. 20 Q. Who is Gary Pickett? 21 A. Gary was my buyer at Walmart. 22 Q. Your buyer at Walmart, so he was -- 23 A. He was a Walmart employee. 24 Q. And he was going to attend this 25 General Manager meeting?</p>

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<p style="text-align: right;">Page 126</p> <p>1 A. Yes, sir.</p> <p>2 Q. And who was Craig Willardson?</p> <p>3 A. Craig was with Moark. I'm not sure</p> <p>4 in what capacity.</p> <p>5 Q. And why would Craig be at a Cal-Maine</p> <p>6 General Managers' meeting?</p> <p>7 MR. ROBISON:</p> <p>8 Object to form.</p> <p>9 A. I have no idea.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. Do you have an understanding of why</p> <p>12 Mr. Pickett would have been coming to a</p> <p>13 Cal-Maine General Managers' meeting?</p> <p>14 A. We were trying to convince Gary to</p> <p>15 give us more business.</p> <p>16 Q. And Steve Michella?</p> <p>17 A. Michella.</p> <p>18 Q. Michella?</p> <p>19 A. Uh-huh, with Egg-Land's Best.</p> <p>20 Q. He's a customer?</p> <p>21 A. No. He's a partner.</p> <p>22 Q. Partner. What do you mean by that?</p> <p>23 A. I don't know exactly what the</p> <p>24 make-up, how it was organized at the time, but</p> <p>25 he was with Egg-Land's Best.</p>	<p style="text-align: right;">Page 128</p> <p>1 Q. Well, that was perfect. You beat me</p> <p>2 to the punch. Do you see that you're on the</p> <p>3 e-mail list for it?</p> <p>4 A. Oh, sure, yeah.</p> <p>5 Q. Do you get this periodically?</p> <p>6 A. I did back then. I'm not -- yeah. I</p> <p>7 still get it, yeah. I'm not sure if it's in</p> <p>8 this format, but yes.</p> <p>9 Q. Did you get it, say, as early --</p> <p>10 during the -- pretty much during the period 2002</p> <p>11 through 2008?</p> <p>12 A. I'm sure I would have, yes.</p> <p>13 Q. Did you review it on a --</p> <p>14 A. No.</p> <p>15 Q. And this is also sent to Fred Adams</p> <p>16 and Dolph Baker. And who's Matt Arrowsmith by</p> <p>17 the way?</p> <p>18 A. He's one of our officers.</p> <p>19 Q. What does he do?</p> <p>20 A. He trades our long and short</p> <p>21 positions in the company.</p> <p>22 Q. Egg long and shorts?</p> <p>23 A. Egg longs, egg shorts. He replaces</p> <p>24 what we're short and sells what we have extra.</p> <p>25 Q. Who's -- is Mr. Dawson still -- is he</p>
<p style="text-align: right;">Page 127</p> <p>1 So we were either a co-op or a</p> <p>2 franchise member or something at the time, but I</p> <p>3 don't recall exactly how it was structured back</p> <p>4 in that day.</p> <p>5 MR. SCHIRMER:</p> <p>6 Okay. Why don't we take a break.</p> <p>7 VIDEOGRAPHER:</p> <p>8 We are now going off the record. The</p> <p>9 time is 12:06 p.m.</p> <p>10 (A recess was taken.)</p> <p>11 VIDEOGRAPHER:</p> <p>12 We are now back on the record. The</p> <p>13 time is 1:07 p.m.</p> <p>14 MR. SCHIRMER:</p> <p>15 Q. I hope you had a nice lunch,</p> <p>16 Mr. Hardin.</p> <p>17 A. Absolutely.</p> <p>18 Q. Okay. Good.</p> <p>19 I'm showing you what has been</p> <p>20 previously marked as Exhibit 22.</p> <p>21 A. Yes, sir.</p> <p>22 Q. What is it?</p> <p>23 A. It's some kind of report about hatch.</p> <p>24 I don't ever look at it, so I don't know that</p> <p>25 much about it, but --</p>	<p style="text-align: right;">Page 129</p> <p>1 with the company?</p> <p>2 A. Uh-huh.</p> <p>3 Q. Now, who is he? What does he to?</p> <p>4 A. He's our CFO.</p> <p>5 Q. CFO. Okay. Has his position changed</p> <p>6 since 2007?</p> <p>7 A. Not that I remember.</p> <p>8 Q. Okay. This type of document, do you</p> <p>9 know who creates it?</p> <p>10 A. No, sir.</p> <p>11 Q. Well, that gets rid of three</p> <p>12 exhibits.</p> <p>13 A. Okay.</p> <p>14 (Exhibit 59 marked.)</p> <p>15 Q. I'm showing you what has been marked</p> <p>16 as Exhibit 59. It is a document bearing Bates</p> <p>17 number CM00178560 through 565 -- yes, 565.</p> <p>18 A. Okay.</p> <p>19 Q. What is it?</p> <p>20 A. I've heard of this, but I've never</p> <p>21 seen one before. They call it the Mid Morning</p> <p>22 Tone. It's some type of report put out by</p> <p>23 Urner Barry, but I'm not -- I've never -- I</p> <p>24 don't ever have access to this. Or page 1 is.</p> <p>25 I don't know what page 2 is. Never</p>

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<p style="text-align: right;">Page 130</p> <p>1 seen those.</p> <p>2 I never see this. Heard of it, but</p> <p>3 I've never seen it.</p> <p>4 Q. You mean the document -- the part of</p> <p>5 the pages that says CM178563 that says: "EGG:</p> <p>6 Situation"?</p> <p>7 A. Yes, sir. I've heard of it, but I've</p> <p>8 never seen it.</p> <p>9 Q. Okay.</p> <p>10 A. Next page is inventory. I get this</p> <p>11 e-mailed to me every week.</p> <p>12 Q. And who creates that document?</p> <p>13 A. I don't know. I don't know. I don't</p> <p>14 know who creates the document.</p> <p>15 And then the last page is a recap,</p> <p>16 week over week over week over week versus a year</p> <p>17 ago, I think, same period a year ago. But,</p> <p>18 again, it's national inventory. I see it, but I</p> <p>19 don't know who prepares it.</p> <p>20 Q. All right. You can set that aside.</p> <p>21 Do you know -- excuse me. I have a question.</p> <p>22 You don't actually have to look at the document.</p> <p>23 Do you know if anybody else at Cal-Maine</p> <p>24 receives these documents on a regular basis, the</p> <p>25 Egg: Situation, Mid Morning Tone, weekly report?</p>	<p style="text-align: right;">Page 132</p> <p>1 Q. Did you testify earlier today that on</p> <p>2 a daily or weekly basis you review the Urner</p> <p>3 Barry --</p> <p>4 A. They publish it daily. It's</p> <p>5 published daily.</p> <p>6 Q. Do you review that?</p> <p>7 A. No, not every day.</p> <p>8 MR. ROBISON:</p> <p>9 Him personally?</p> <p>10 MR. SCHIRMER:</p> <p>11 Him personally, yes.</p> <p>12 A. No, not every day. I mean, I</p> <p>13 generally know where it's at, but not every day.</p> <p>14 Q. But you review it on a regular</p> <p>15 basis --</p> <p>16 A. Oh, yeah.</p> <p>17 Q. -- so you can tell where the egg</p> <p>18 market is.</p> <p>19 A. Oh, absolutely.</p> <p>20 Q. And that's part of your job.</p> <p>21 A. Absolutely, yeah.</p> <p>22 Q. The second page of this document --</p> <p>23 the second page of this group of documents is</p> <p>24 called E.C.I. Trading Activity, page 1 of 2.</p> <p>25 A. Yes, sir.</p>
<p style="text-align: right;">Page 131</p> <p>1 A. I don't know. I'm sure we have</p> <p>2 people that have a need for it, but I don't</p> <p>3 know.</p> <p>4 (Exhibit 60 marked.)</p> <p>5 Q. I'm showing you what has been marked</p> <p>6 as Exhibit 60. This is a document that bears</p> <p>7 Bates number CM00181669 through 674 -- or at</p> <p>8 least it's a document or series of documents</p> <p>9 that was produced as a single document.</p> <p>10 A. Uh-huh.</p> <p>11 Q. The first page is EGG: Situation</p> <p>12 report dated December 28, 2004.</p> <p>13 A. Okay.</p> <p>14 Q. That was the document you said you</p> <p>15 know about, but you never look at?</p> <p>16 A. Well, I don't -- no, I don't mean I</p> <p>17 don't look at it. I don't have access to it.</p> <p>18 This is a print-off of the Comtel, and I don't</p> <p>19 have access to the Comtel.</p> <p>20 Q. What do you -- you said something,</p> <p>21 that you review Urner Barry numbers on either a</p> <p>22 daily or weekly basis earlier today. Am I</p> <p>23 correct, or am I wrong?</p> <p>24 A. I'm not sure what the question is.</p> <p>25 I'm sorry.</p>	<p style="text-align: right;">Page 133</p> <p>1 Q. And it's Bates numbers 670 through</p> <p>2 671.</p> <p>3 Do you know what this is?</p> <p>4 A. No, sir. I don't. Never seen it.</p> <p>5 Q. And the last page is -- the second to</p> <p>6 last page is a weekly inventory report. That's</p> <p>7 673.</p> <p>8 A. I think that's what we were looking</p> <p>9 at over here.</p> <p>10 Q. Right.</p> <p>11 A. Same thing.</p> <p>12 Q. Just a different date.</p> <p>13 A. Yes, sir. I see it, but --</p> <p>14 Q. And the last page is a handwritten</p> <p>15 document that says: "National Inventory Shell</p> <p>16 Egg."</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you know whose handwriting that</p> <p>19 is?</p> <p>20 A. No, sir.</p> <p>21 Q. It's not yours?</p> <p>22 A. No, sir.</p> <p>23 Q. Okay. The next two documents.</p> <p>24 A. Okay.</p> <p>25 Q. I'm showing you now what we marked</p>

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<p style="text-align: right;">Page 134</p> <p>1 yesterday as Exhibit 23 and 24.</p> <p>2 A. Yes, sir.</p> <p>3 Q. Cal-A-Grams.</p> <p>4 A. Yes, sir.</p> <p>5 Q. Dated April 2, 2007. Look at number</p> <p>6 23 for a moment, which is labeled --</p> <p>7 A. Oh, Exhibit 23, yes, sir.</p> <p>8 Q. -- which is labeled CM0051057 through</p> <p>9 57-something.</p> <p>10 A. Yes, sir.</p> <p>11 Q. It's actually 577 through 78, but</p> <p>12 that's okay. Do you understand what this</p> <p>13 document is showing?</p> <p>14 A. Yes, sir.</p> <p>15 Q. What is it?</p> <p>16 A. It's what we transfer eggs through</p> <p>17 our plants for, the basis numbers that we</p> <p>18 transfer eggs into our plants.</p> <p>19 Q. I'm not certain I understand. What</p> <p>20 do you mean?</p> <p>21 A. When we buy eggs on the outside</p> <p>22 sometimes we have to pay out the nose for them</p> <p>23 to get them.</p> <p>24 Q. Uh-huh.</p> <p>25 A. And we don't want our General</p>	<p style="text-align: right;">Page 136</p> <p>1 what you charge your local distribution centers</p> <p>2 for the eggs?</p> <p>3 MR. ROBISON:</p> <p>4 Same objection. No foundation.</p> <p>5 A. It's -- all we're doing is keeping</p> <p>6 all of our plants on a level playing field, so</p> <p>7 that they all have the same opportunity to</p> <p>8 succeed. That's all it is. It's just -- that's</p> <p>9 all it is.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. Now, if you look at number 24 --</p> <p>12 A. Yes, sir.</p> <p>13 Q. -- it says, "Inter-company Nest Run</p> <p>14 Pricing."</p> <p>15 A. Yes, sir.</p> <p>16 Q. Do you understand what that is?</p> <p>17 A. Uh-huh.</p> <p>18 Q. What is it, please?</p> <p>19 A. It's just eggs right from the hen,</p> <p>20 ungraded. They're called nest runs. So soon as</p> <p>21 she lays it, that's a nest run egg.</p> <p>22 Q. What does it mean, nest run pricing?</p> <p>23 Do you have an understanding of that, the</p> <p>24 meaning of that term?</p> <p>25 A. Same thing as this over here. It's</p>
<p style="text-align: right;">Page 135</p> <p>1 Managers to suffer, so we transfer them to these</p> <p>2 at these prices and take a corporate hit for the</p> <p>3 difference.</p> <p>4 Q. So these are the imputed dollar</p> <p>5 numbers for inter-corporate transfers?</p> <p>6 MR. ROBISON:</p> <p>7 Object to form.</p> <p>8 A. Ask me that again.</p> <p>9 MR. SCHIRMER:</p> <p>10 Q. Are these the imputed dollar numbers</p> <p>11 for inter-corporate transfer -- imputed price</p> <p>12 bases for inter-corporate transfer?</p> <p>13 MR. ROBISON:</p> <p>14 Same objection.</p> <p>15 A. I'm not sure I know what "imputed"</p> <p>16 means.</p> <p>17 MR. SCHIRMER:</p> <p>18 Q. I think you answered it the first</p> <p>19 time, but I was just trying to clean it up a</p> <p>20 little bit.</p> <p>21 A. Yeah, I'm sorry. I don't understand</p> <p>22 the question, but --</p> <p>23 Q. It's my fault. It's a lawyerese.</p> <p>24 It's what you, when you buy something at the</p> <p>25 corporate level, transfer -- it's essentially</p>	<p style="text-align: right;">Page 137</p> <p>1 just these are -- these look like graded eggs.</p> <p>2 These are nest run eggs.</p> <p>3 MR. ROBISON:</p> <p>4 So Exhibit 23 is graded?</p> <p>5 A. Exhibit 23 looks to be graded. This</p> <p>6 looks like to be something --</p> <p>7 MR. ROBISON:</p> <p>8 24 is not graded.</p> <p>9 A. Correct. That's all it is.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. Now, if you'll look at the next page</p> <p>12 on Exhibit 24.</p> <p>13 A. Yes, sir.</p> <p>14 Q. It says: "Inter-company Transfer</p> <p>15 Pricing will be in effect."</p> <p>16 A. Yes, sir.</p> <p>17 Q. Do you have an understanding of what</p> <p>18 the numbers down here, carton/basket, are?</p> <p>19 A. In what? I'm sorry.</p> <p>20 Q. Again, it says size, CTN/BSKT --</p> <p>21 A. Sure.</p> <p>22 Q. What does that mean?</p> <p>23 A. In a carton in a basket is -- for</p> <p>24 jumbos is 18 and a half cents under the large</p> <p>25 market. In a carton in a case, corrugated box,</p>

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<p style="text-align: right;">Page 138</p> <p>1 is 17 and a half cents under the market. And</p> <p>2 that's our inter-company pricing.</p> <p>3 Q. When they talk about market, that's</p> <p>4 whatever corporate Urner Barry market you choose</p> <p>5 to peg to?</p> <p>6 A. Well, we don't have a corporate Urner</p> <p>7 Barry market, but whatever market we peg to,</p> <p>8 yes.</p> <p>9 Q. I'm not trying to --</p> <p>10 A. Right. Yeah, it's just -- we're</p> <p>11 using -- as you see, it's Thursday market, like</p> <p>12 many of our customers, for the next -- for</p> <p>13 Sunday through Saturday. And we're just selling</p> <p>14 eggs amongst our plants is all we're doing.</p> <p>15 Q. Okay. Now, I think you said and</p> <p>16 agreed as part of your job one of the things you</p> <p>17 have to do is keep track of what's going on in</p> <p>18 the egg market.</p> <p>19 A. Yes, sir. My customers ask me about</p> <p>20 it a lot.</p> <p>21 Q. Do you provide information to your</p> <p>22 customers about the wholesale market on a</p> <p>23 regular basis?</p> <p>24 A. The wholesale market?</p> <p>25 Q. Uh-huh.</p>	<p style="text-align: right;">Page 140</p> <p>1 A. Uh-huh.</p> <p>2 Q. "I don't think we can link him to</p> <p>3 this information. Tell me what to do."</p> <p>4 What is a daily market fax broadcast?</p> <p>5 A. The Urner Barry market that you have</p> <p>6 been showing me all morning, I have customers</p> <p>7 that want to see that some day of the week.</p> <p>8 Some of them want to see it every day of the</p> <p>9 week.</p> <p>10 So we just have -- in our fax</p> <p>11 machine, we stick it in there and hit broadcast,</p> <p>12 and it goes to the people that are in that</p> <p>13 lineup. And it's just the market.</p> <p>14 Q. I understand.</p> <p>15 A. It's just the market. So -- but what</p> <p>16 he's wanting to do, he's wanting to link him to</p> <p>17 the Comtel. And I can't link him to Comtel.</p> <p>18 It's a subscription service that you buy from</p> <p>19 Urner Barry.</p> <p>20 Q. What you do is you -- let me see if I</p> <p>21 understand. For the customers who want to know</p> <p>22 what the Urner Barry market is doing --</p> <p>23 A. Right.</p> <p>24 Q. -- and they ask you for it --</p> <p>25 A. I send it to them every day.</p>
<p style="text-align: right;">Page 139</p> <p>1 A. Describe what you mean by wholesale</p> <p>2 market.</p> <p>3 Q. Well, here, let me show you this</p> <p>4 document.</p> <p>5 (Exhibit 61 marked.)</p> <p>6 Q. I'm showing you a document that's</p> <p>7 been marked as Exhibit 61.</p> <p>8 A. Okay.</p> <p>9 Q. What is this document, sir? It's</p> <p>10 got -- just a minute, I'll put --</p> <p>11 MR. SCHIRMER:</p> <p>12 For the folks on the phone, this is</p> <p>13 Bates number 00721965 through 966.</p> <p>14 Q. What is this document, Mr. Hardin?</p> <p>15 A. This is an e-mail that Patrick</p> <p>16 Caballero sent to me asking me permission.</p> <p>17 Q. Okay. And what is he asking your</p> <p>18 permission about?</p> <p>19 A. To send Tom O'Brien the egg market.</p> <p>20 Q. Okay. When we talk about the egg</p> <p>21 market, what -- he writes the following -- or</p> <p>22 you write the following to him, I can't tell --</p> <p>23 or Jeff -- actually, he writes to you, I guess:</p> <p>24 "Jeff, we can add him to our daily market fax</p> <p>25 broadcast."</p>	<p style="text-align: right;">Page 141</p> <p>1 Q. -- you send it to them every day by</p> <p>2 fax?</p> <p>3 A. Yeah. Just like H-E-B or Publix,</p> <p>4 they want to know about every day what's going</p> <p>5 on with the egg market, so we send it to them.</p> <p>6 Q. Okay.</p> <p>7 A. That's all it is.</p> <p>8 Q. Do you do regular price checks of the</p> <p>9 retail markets?</p> <p>10 A. Yes, sir.</p> <p>11 Q. How often do you have them done?</p> <p>12 A. We do it at least once a week with</p> <p>13 some group of customers -- or some group of</p> <p>14 stores, some group of retailers.</p> <p>15 Q. Okay.</p> <p>16 A. Depends on the region of the country</p> <p>17 probably. More frequently where we're</p> <p>18 strongest, and less frequently where we're</p> <p>19 weakest.</p> <p>20 Q. I want you to look at Exhibit 11.</p> <p>21 A. Okay.</p> <p>22 Q. What is Exhibit 11, sir? I guess</p> <p>23 it's a two-sided document.</p> <p>24 A. It looks like a price check document</p> <p>25 from somewhere in the southeast, where all of</p>

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<p style="text-align: right;">Page 142</p> <p>1 these customers were similarly located.</p> <p>2 Q. And these would be the customers</p> <p>3 where --</p> <p>4 A. Retail prices.</p> <p>5 Q. -- Cal-Maine would check --</p> <p>6 A. Yes, sir. I just have people out in</p> <p>7 the stores checking retail prices.</p> <p>8 Q. And do you get this information on a</p> <p>9 periodic basis?</p> <p>10 A. Uh-huh.</p> <p>11 MR. ROBISON:</p> <p>12 You need to say yes.</p> <p>13 A. Oh, I'm sorry. Yes. Sorry.</p> <p>14 MR. SCHIRMER:</p> <p>15 Q. Would you look at a document that's</p> <p>16 going to be marked as 62.</p> <p>17 (Exhibit 62 marked.)</p> <p>18 Q. This is a document bearing Bates</p> <p>19 number CM00561499. It's a single-page document.</p> <p>20 A. Yes, sir.</p> <p>21 Q. What is it?</p> <p>22 A. Same thing as the other.</p> <p>23 Q. Just for Dallas?</p> <p>24 A. This looks like the Dallas piece. We</p> <p>25 would have another one for Houston, too.</p>	<p style="text-align: right;">Page 144</p> <p>1 MR. SCHIRMER:</p> <p>2 I was congratulating myself for</p> <p>3 getting all the zeroes the previous time.</p> <p>4 Q. What is this?</p> <p>5 A. It is the same thing as this, except</p> <p>6 Michael Stockton at Albertsons probably wanted</p> <p>7 something, hey, I need something on Wednesday,</p> <p>8 versus whenever these others were taken.</p> <p>9 So we sent one of our sales reps to</p> <p>10 Tom Thumb and Kroger and collected the retail</p> <p>11 information and sent it to Michael Stockton at</p> <p>12 Albertsons.</p> <p>13 Q. Do you know who Eloy Torres is?</p> <p>14 A. Yes, sir. He works for us. He's one</p> <p>15 of my sales reps.</p> <p>16 Q. And how about Jessica Quinn?</p> <p>17 A. She works for me.</p> <p>18 Q. She a sales rep?</p> <p>19 A. Sales Manager.</p> <p>20 Q. Sales Manager.</p> <p>21 A. Yes, sir.</p> <p>22 Q. Okay.</p> <p>23 (Discussion off the record.)</p> <p>24 Q. Look at -- would you please take out</p> <p>25 Exhibit 29? Now, this is an e-mail from Bob</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. Who is Gary Pickett? I've forgotten.</p> <p>2 A. He was my buyer at Walmart.</p> <p>3 Q. So you do the weekly price checks,</p> <p>4 and you provide these to some of your clients?</p> <p>5 A. Oh, absolutely --</p> <p>6 MR. ROBISON:</p> <p>7 Object to the form.</p> <p>8 A. Yes. I'm sorry. But, yes, they ask</p> <p>9 us to.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. And these are the retail price</p> <p>12 checks.</p> <p>13 A. Yes, sir.</p> <p>14 MR. SCHIRMER:</p> <p>15 Would you please mark this.</p> <p>16 (Exhibit 63 marked.)</p> <p>17 A. Yes, sir.</p> <p>18 Q. This is a document that bears</p> <p>19 ALBEGED00000616 through 617.</p> <p>20 MS. MARKOWITZ:</p> <p>21 Could you say that prefix again?</p> <p>22 MR. SCHIRMER:</p> <p>23 Sure. ALBEGED00000616 through 617.</p> <p>24 MS. MARKOWITZ:</p> <p>25 Thank you.</p>	<p style="text-align: right;">Page 145</p> <p>1 Scott to a variety of people, and it's got --</p> <p>2 bears Bates number CM00450832.</p> <p>3 A. Yes, sir.</p> <p>4 Q. Do you see that you are labeled --</p> <p>5 listed as one of the people to whom this was</p> <p>6 cc'd?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Do you remember receiving this</p> <p>9 document?</p> <p>10 A. I don't remember receiving it, no,</p> <p>11 sir.</p> <p>12 Q. Now, would you look at the fourth</p> <p>13 line from the bottom that begins "hopefully"?</p> <p>14 A. Yes, sir.</p> <p>15 Q. It says: "Hopefully, we can reduce</p> <p>16 supply and get back in the buying mode to get</p> <p>17 this price back up. We may have to cut deeper</p> <p>18 into the flock, by continued early selling,</p> <p>19 which makes your job harder in matching your</p> <p>20 work force with current volume."</p> <p>21 Sorry, I don't understand what</p> <p>22 Mr. Scott is saying there, sir. Can you help</p> <p>23 me?</p> <p>24 MR. ROBISON:</p> <p>25 Object to form.</p>

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<p style="text-align: right;">Page 146</p> <p>1 MR. SCHIRMER:</p> <p>2 Q. What does he mean? What was your</p> <p>3 understanding of what he meant?</p> <p>4 A. I don't remember getting it. Our</p> <p>5 market is at 64 cents. At 64 cents, we're</p> <p>6 losing our shirt. Money is pouring out of the</p> <p>7 bank at 64 cent market.</p> <p>8 And he's saying, don't paint the</p> <p>9 fences, don't do nothing, we ain't got the money</p> <p>10 to do anything. He's saying, hang on, maybe</p> <p>11 we'll kill some chickens -- or somebody will</p> <p>12 kill some chickens -- or molt some chickens and</p> <p>13 get out of this.</p> <p>14 But at that kind of money, we are</p> <p>15 losing our shirt. Don't paint nothing, don't do</p> <p>16 anything.</p> <p>17 Q. Okay. And he's saying hopefully we</p> <p>18 can reduce the supply of chickens and --</p> <p>19 A. Well, I don't think he's saying</p> <p>20 hopefully we can reduce the supply.</p> <p>21 Q. Well, it says "we."</p> <p>22 A. Well, meaning Cal-Maine.</p> <p>23 Q. And the industry, I guess?</p> <p>24 MR. ROBISON:</p> <p>25 Same objection. No, no, no.</p>	<p style="text-align: right;">Page 148</p> <p>1 schedule.</p> <p>2 Q. Is there a molt and sell schedule</p> <p>3 that's regularly set at Cal-Maine?</p> <p>4 A. They set them. Dolph determines what</p> <p>5 our molt and sell schedule will be.</p> <p>6 Q. Okay. Mr. Hardin, do you know of</p> <p>7 something called a flock reduction program at</p> <p>8 Cal-Maine?</p> <p>9 A. No, sir.</p> <p>10 Q. Are you aware of whether there has</p> <p>11 been something called a flock reduction program</p> <p>12 during the period 2002 to 2000 -- until today?</p> <p>13 A. Not that I'm aware of, no, sir.</p> <p>14 (Exhibit 65 marked.)</p> <p>15 Q. I'm showing you what has been marked</p> <p>16 as Exhibit 65. Now, this is a series of pages</p> <p>17 that give consecutive dates, but there are --</p> <p>18 all these run consecutively starting with --</p> <p>19 there's actually one document that contains lots</p> <p>20 of these week by week --</p> <p>21 A. Uh-huh.</p> <p>22 Q. -- starting with CM00266782 through</p> <p>23 905, but I only provided you with a sample of</p> <p>24 that, that goes roughly from the beginning to</p> <p>25 the end.</p>
<p style="text-align: right;">Page 147</p> <p>1 Objection. Calls for speculation.</p> <p>2 A. I couldn't say.</p> <p>3 MR. SCHIRMER:</p> <p>4 Q. Okay.</p> <p>5 A. But the bottom line is, at 64 cents</p> <p>6 we're losing our shirt.</p> <p>7 (Exhibit 64 marked.)</p> <p>8 Q. I'm showing you a document which has</p> <p>9 been marked as Exhibit 64. It bears Bates</p> <p>10 numbers CM00541328. I swear that's the number</p> <p>11 on the bottom.</p> <p>12 A. Okay.</p> <p>13 Q. What is this, sir?</p> <p>14 A. It looks like an e-mail from Bob</p> <p>15 Scott to Dolph.</p> <p>16 Q. And you are cc'd on this?</p> <p>17 A. Yes, sir.</p> <p>18 Q. Do you have an understanding of what</p> <p>19 Mr. Scott meant when he wrote: "Re Our</p> <p>20 position: Am staying the course on Molt and</p> <p>21 Sell. In fact, moving some sales up on two</p> <p>22 flocks that were not previously able to move</p> <p>23 before Easter"?</p> <p>24 A. He's just communicating to Dolph that</p> <p>25 we're going to stay on our molt and sell</p>	<p style="text-align: right;">Page 149</p> <p>1 A. Uh-huh.</p> <p>2 Q. You see -- what is the -- it says:</p> <p>3 "Mr. Jeff Hardin, Mr. David Jenkins and Ken</p> <p>4 Paramore e-mail." Do you see that?</p> <p>5 A. Uh-huh.</p> <p>6 Q. Do you remember receiving these</p> <p>7 sheets, sir?</p> <p>8 A. I don't remember it, but I'm sure I</p> <p>9 did if I was carboned on it.</p> <p>10 Q. And do you have an understanding of</p> <p>11 what these sheets reflect?</p> <p>12 A. No, sir. I really don't. It's</p> <p>13 chicken stuff, and I just didn't pay that much</p> <p>14 attention to the bird numbers.</p> <p>15 Q. And am I correct it's called a</p> <p>16 "Record of Flock Reduction Program"?</p> <p>17 A. Yes, sir, that's what it looks like.</p> <p>18 Q. And you don't -- my understanding of</p> <p>19 your last answer is you do not have an</p> <p>20 understanding of what the flock reduction</p> <p>21 program was.</p> <p>22 A. No, sir. Again, I'm not the chicken</p> <p>23 man. I'm a sales guy.</p> <p>24 Q. Take a look at Exhibit 26. This was</p> <p>25 a document that was introduced yesterday. It is</p>

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<p style="text-align: right;">Page 150</p> <p>1 a page from Cal-Maine's website, 2 www.calmainefoods/investigators/volatility-of-egg- 3 prices.aspx, is the web address for this 4 document. It was printed out on April 2, 2014. 5 A. Okay. 6 Q. You ever seen this page on your 7 website, sir? 8 A. Yes, sir. 9 Q. The second sentence of this 10 particular -- of this statement of volatility of 11 egg prices is: "Small increases in production 12 or small decrease in demand can have a large 13 adverse effect on shell egg prices." Is that 14 consistent with your understanding of the 15 market, sir? 16 A. Yes. 17 Q. Would that be consistent with your 18 understanding of the market pretty much through 19 your time at Cal-Maine, or at least since 2000? 20 A. Yes, sir. 21 Q. Let's have a look at Exhibit 27 for a 22 minute. This was marked also yesterday. It's 23 the Form 10-K for the year -- fiscal year-ended 24 2002. 25 A. Okay.</p>	<p style="text-align: right;">Page 152</p> <p>1 85 percent of its fiscal 2002 egg production." 2 You see that? It's right underneath "Shell 3 Eggs." 4 A. Okay. Yes, sir. 5 Q. That's consistent with your 6 understanding of the sales of Cal-Maine and the 7 source of those sales? 8 MR. ROBISON: 9 Object to form. 10 A. Company-owned facilities accounted 11 for approximately 85 percent of its total 12 production. So we're in a production area here. 13 I don't know that number. 14 MR. SCHIRMER: 15 Q. Okay. Turn to the next page. In the 16 third full paragraph -- there's a carryover 17 paragraph at the top of the page. Do you see 18 that? 19 A. Yes, sir. 20 Q. Then there's three full paragraphs 21 down. 22 A. Okay. 23 Q. The 2002 K states -- and this is on 24 page 5, if you read the document -- that: "The 25 company operates in a cyclical industry with</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. And we discussed earlier today that 2 you would receive this in the ordinary course of 3 business? 4 A. I'm sure I would, yes, sir. 5 Q. If you'll turn to page -- now, this 6 document is -- because it's a printout has page 7 numbers that are a little different. 8 A. Okay. 9 Q. Okay. I want you to go to the page 10 of the document that has the number 4 right in 11 the middle. I think it's -- 12 A. Yes, sir. 13 Q. -- four pages back. 14 A. Right above "Shell Eggs." 15 Q. Right above "Shell Eggs." 16 A. Okay. 17 Q. Actually, right below "Shell Eggs" is 18 where I wanted you to go to. It says -- now, we 19 were talking earlier about the company's 20 production being fully integrated? 21 A. Yes, sir. 22 Q. "It hatches chicks, grows pullets, 23 manufactures feed and produces and distributes 24 shells eggs." And the: "Company-owned 25 facilities accounted for approximately</p>	<p style="text-align: right;">Page 153</p> <p>1 total demand that is generally level and a 2 product which is price-inelastic." Is that 3 consistent with your understanding, sir? 4 A. I would be -- yes. I would agree 5 with that at a wholesale and retail level -- or, 6 excuse me, at a distributor and retail level. 7 Q. Okay. 8 A. Right. 9 Q. Distributor and retail. 10 A. Yeah. 11 Q. I wanted to make sure. 12 Would you thus agree -- it is also 13 thus consistent with your understanding of the 14 market that small increases in production or 15 decreases in demand can have a large adverse 16 effect on prices and vice-versa? 17 A. Yes. 18 Q. There's another statement here that I 19 wanted to ask you about. It says: "However, 20 economic conditions in the egg industry are 21 expected to exhibit less cyclicity in the 22 future. The industry is concentrating into 23 fewer but stronger hands, which should help to 24 lessen the extreme cyclicity of the past." Do 25 you see that?</p>

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<p style="text-align: right;">Page 154</p> <p>1 A. Uh-huh. Yes, sir.</p> <p>2 Q. I'm not certain I understand what</p> <p>3 that means. Do you have an understanding of the</p> <p>4 meaning of those two sentences, sir?</p> <p>5 A. I would be speculating.</p> <p>6 VIDEOGRAPHER:</p> <p>7 Four minutes.</p> <p>8 A. Obviously, I didn't write it, so --</p> <p>9 MR. SCHIRMER:</p> <p>10 Q. I would hope not.</p> <p>11 A. -- so I would be speculating as to</p> <p>12 what somebody was trying to say there.</p> <p>13 Q. Okay. Right under number 5, the</p> <p>14 second paragraph, it says: "The Company sells</p> <p>15 its shell eggs at prices generally related to</p> <p>16 independently quoted wholesale market prices."</p> <p>17 Is that the Urner Barry basis we were speaking</p> <p>18 about earlier in reviewing some of the earlier</p> <p>19 documents?</p> <p>20 A. I'm sorry, ask -- where was that,</p> <p>21 again?</p> <p>22 Q. Under 5.</p> <p>23 A. Under 5. The second paragraph?</p> <p>24 Q. The second paragraph down, first</p> <p>25 sentence.</p>	<p style="text-align: right;">Page 156</p> <p>1 Q. And that would mean that there would</p> <p>2 be fewer chickens?</p> <p>3 A. It's speculation on my part, but I</p> <p>4 would say yes. I wouldn't be taking as big a</p> <p>5 chance if I had high feed costs to deal with.</p> <p>6 VIDEOGRAPHER:</p> <p>7 One minute.</p> <p>8 MR. SCHIRMER:</p> <p>9 Let's take a break.</p> <p>10 VIDEOGRAPHER:</p> <p>11 This is the end of tape number two in</p> <p>12 the video deposition of Jeff Hardin. We are now</p> <p>13 going off the record. The time is 1:42 p.m.</p> <p>14 (A recess was taken.)</p> <p>15 VIDEOGRAPHER:</p> <p>16 This is the beginning of tape number</p> <p>17 three in the video deposition of Jeff Hardin.</p> <p>18 We are now going back on the record. The time</p> <p>19 is 1:53 p.m.</p> <p>20 MR. SCHIRMER:</p> <p>21 Q. Mr. Hardin, you just testified</p> <p>22 regarding price -- your understanding of the egg</p> <p>23 market a few minutes ago based upon the 2000 --</p> <p>24 I think it was '4 -- or 2002 10-K I put in front</p> <p>25 of you; is that right?</p>
<p style="text-align: right;">Page 155</p> <p>1 A. Yes, sir. That's my understanding of</p> <p>2 what that means. That would be the Urner Barry.</p> <p>3 Q. Okay. Oh, go back up to the run-over</p> <p>4 paragraph on the top of this page. There's a</p> <p>5 statement at the end of that run-over paragraph,</p> <p>6 the second line from the end, that says:</p> <p>7 "Historically, the Company has tended to have</p> <p>8 higher profit margins when feed costs are</p> <p>9 higher." Is that consistent with your</p> <p>10 understanding of the facts, at least at that</p> <p>11 time?</p> <p>12 A. I think that would reflect what</p> <p>13 historically we would have seen. That's been my</p> <p>14 history. High feed costs lead to fewer</p> <p>15 chickens, which leads to higher prices.</p> <p>16 Q. And why would fewer chickens lead to</p> <p>17 higher price and higher profits?</p> <p>18 A. I'm sorry. I said feed costs.</p> <p>19 Q. Why would higher feed costs lead to</p> <p>20 fewer chickens, higher prices and greater</p> <p>21 profits?</p> <p>22 A. Higher feed costs means higher costs,</p> <p>23 period. And the farmer typically is going to be</p> <p>24 reluctant to add a bunch of chickens with high</p> <p>25 feed prices.</p>	<p style="text-align: right;">Page 157</p> <p>1 MR. ROBISON:</p> <p>2 Object to form.</p> <p>3 MS. MARKOWITZ:</p> <p>4 I'm sorry. Can you both move a</p> <p>5 little closer to the phone or speak up?</p> <p>6 MR. SCHIRMER:</p> <p>7 Okay. I'm sorry. That's my fault.</p> <p>8 MS. MARKOWITZ:</p> <p>9 Thanks.</p> <p>10 MR. SCHIRMER:</p> <p>11 Q. Right.</p> <p>12 A. Okay.</p> <p>13 Q. That was the 2002 10-K?</p> <p>14 A. This was the 2002 10-K.</p> <p>15 Q. Yeah. And you said that it was your</p> <p>16 understanding that it was -- that demand was</p> <p>17 roughly stable, and the market, both the retail</p> <p>18 and wholesale markets, are relatively</p> <p>19 price-inelastic; did I understand that right?</p> <p>20 A. The retail and the distributor</p> <p>21 markets, the -- consumer markets, consumer</p> <p>22 markets are fairly price-inelastic, yes.</p> <p>23 Q. Would you please have a look at what</p> <p>24 has been marked as Exhibit 66?</p> <p>25 A. Yes, sir.</p>

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<p style="text-align: right;">Page 158</p> <p>1 (Exhibit 66 marked.)</p> <p>2 Q. This one came out a little better</p> <p>3 when it printed. And they all have page</p> <p>4 numbers. Would you turn to page number 9?</p> <p>5 Exhibit 66 is the Form 10-K for</p> <p>6 Cal-Maine Foods for the year ended May 29, 2010.</p> <p>7 Am I correctly characterizing the document, sir?</p> <p>8 A. I think so, yes, sir.</p> <p>9 Q. Please turn to page 9.</p> <p>10 A. Okay.</p> <p>11 Q. And there's a big -- "Item 1-A. Risk</p> <p>12 Factors." See that? You see that?</p> <p>13 And then there's a smaller, all black</p> <p>14 or bolded section that says: "Market price of</p> <p>15 wholesale eggs are volatile and changes in these</p> <p>16 prices can adversely impact our operations." Do</p> <p>17 you understand that -- see that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And I take it you would agree with</p> <p>20 that statement: "Market prices of wholesale</p> <p>21 shell eggs are volatile and changes in these</p> <p>22 prices and costs can adversely impact our</p> <p>23 results of our operations"?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Would you go to the last sentence of</p>	<p style="text-align: right;">Page 160</p> <p>1 MR. SCHIRMER:</p> <p>2 Q. There was something else -- would you</p> <p>3 take a look at number 67 for a minute.</p> <p>4 (Exhibit 67 marked.)</p> <p>5 Q. There's a similar statement in number</p> <p>6 67. That is the 2011 K. Exhibit 67 is the</p> <p>7 Form 10-K for fiscal year ended May 28, 2011, of</p> <p>8 Cal-Maine Foods. I hope I'm correctly stating</p> <p>9 what that is. I think I am, aren't I, sir?</p> <p>10 A. Okay.</p> <p>11 Q. There is a similar statement on</p> <p>12 page 9. I'm not going to ask you about that --</p> <p>13 A. Okay.</p> <p>14 Q. But would you then take a look at</p> <p>15 page 4? There's a section called "Growth</p> <p>16 Strategy and Acquisitions."</p> <p>17 A. Yes, sir.</p> <p>18 Q. It says: "For many years, we have</p> <p>19 pursued a growth strategy focused on the</p> <p>20 acquisition of existing shell egg production and</p> <p>21 processing facilities, as well as the</p> <p>22 construction of new and more efficient</p> <p>23 facilities."</p> <p>24 Is it consistent with your</p> <p>25 understanding that at least since the year 2000</p>
<p style="text-align: right;">Page 159</p> <p>1 the paragraph underneath that?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Do you see the sentence that says:</p> <p>4 "In general, a 1% increase or decrease in</p> <p>5 industry supply will translate into a</p> <p>6 corresponding 7% change in shell egg prices"?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Now, is that consistent with your</p> <p>9 understanding of the market, sir?</p> <p>10 MR. ROBISON:</p> <p>11 Object to form.</p> <p>12 A. That's what I've been told, but I'm</p> <p>13 no economist. I don't know.</p> <p>14 MR. SCHIRMER:</p> <p>15 Q. Who told you that?</p> <p>16 A. I couldn't even tell you. It's</p> <p>17 general industry knowledge type stuff. It</p> <p>18 doesn't take much change in the supply to affect</p> <p>19 the price --</p> <p>20 Q. Okay.</p> <p>21 A. -- at the wholesale level.</p> <p>22 Q. Price-inelastic at the retail level,</p> <p>23 consumer level, too, isn't it?</p> <p>24 MR. ROBISON:</p> <p>25 Objection.</p>	<p style="text-align: right;">Page 161</p> <p>1 Cal-Maine has been consistently pursuing</p> <p>2 acquisitions and construction of new facilities?</p> <p>3 MR. ROBISON:</p> <p>4 Object to form. Foundation.</p> <p>5 A. We have pursued acquisitions and</p> <p>6 built new facilities since then, yes. Bunches</p> <p>7 of them since -- through that time frame we've</p> <p>8 built and purchased.</p> <p>9 MR. SCHIRMER:</p> <p>10 Q. It says: "Since the beginning of</p> <p>11 fiscal 1989" --</p> <p>12 A. Yes, sir.</p> <p>13 Q. -- you've completed 16 acquisitions.</p> <p>14 A. Probably so. I don't remember.</p> <p>15 Q. 16 acquisitions.</p> <p>16 A. 16? I don't know them exactly,</p> <p>17 but --</p> <p>18 Q. It's the next line down.</p> <p>19 A. I'm sure that's right, yes.</p> <p>20 Q. So at least for that long the company</p> <p>21 has been engaging in acquisitions and</p> <p>22 construction of new facilities?</p> <p>23 A. Absolutely. It's gotten harder to</p> <p>24 build new stuff, but we --</p> <p>25 Q. Why is it harder to build today?</p>

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<p style="text-align: right;">Page 162</p> <p>1 A. You're getting off of the production 2 end of it, but generally, from what I'm told, 3 it's because of permitting, EPA, water, state 4 regulatory stuff. Just harder to build new 5 facilities. 6 Q. Do you have an understanding of how 7 long it takes to build a new facility today? 8 A. I've been told if you can get 9 permitted, once you get permitted, about two and 10 a half years to get it operational, maybe three 11 to get it fully operational. 12 Q. And has anybody told you how long it 13 takes to go through the permitting process? 14 A. Not specifically. I just -- it's a 15 long curve. It's a long time. 16 Q. Okay. Is the time that it takes to 17 build facilities once it's permitted been fairly 18 consistent since about -- since 2002? 19 MR. ROBISON: 20 Objection to foundation. 21 MR. SCHIRMER: 22 Q. Do you have an understanding of that? 23 A. The building of the facilities 24 themselves has probably been fairly consistent 25 as to how long it takes to build them; but,</p>	<p style="text-align: right;">Page 164</p> <p>1 100 weeks old. So you have to space it all out 2 from a chicken perspective to get a product mix 3 that the consumer wants. 4 Q. As well as the time it takes to just 5 strictly construct it. 6 A. Absolutely. 7 Q. Would you take another look at 8 Exhibit 25 for just a minute? It was back a 9 little bit ago. 10 MR. ROBISON: 11 I think he -- 12 MR. SCHIRMER: 13 I think he still has it over there. 14 A. 25? 15 Q. I've got it right here. Hold on. 16 A. Okay. 17 Q. Look at Exhibit 25. I think the 18 second paragraph talks about specialty eggs 19 being a little bit -- the price of specialty 20 eggs being less volatile or more profitable. 21 A. Okay. 22 MR. ROBISON: 23 Object to form. 24 MR. SCHIRMER: 25 Q. Do you have an understanding why</p>
<p style="text-align: right;">Page 163</p> <p>1 you're not talking about building barns, you're 2 talking about bringing chickens into production, 3 and so there's a difference. 4 You can probably build a whole 5 facility fairly quickly, but to populate it with 6 chickens you've got to do it in an efficient way 7 that matches your customer's product mix. 8 It's very complicated, and I'm not a 9 production guy. 10 Q. Okay. I'm just trying to understand 11 what you just said. Give me just a second. 12 A. Okay. Sure. 13 Q. Who at Cal-Maine would have the most 14 knowledge of how long it has taken to bring a 15 new egg facility online during the period 2002 16 to 2014? 17 A. Probably Steve Storm or Dolph. 18 Q. Okay. 19 A. Again, it's not so much about 20 building, okay? It's about permitting and 21 getting chickens to the right age. 22 Safeway don't want a whole bunch of 23 20-week-old chickens. They don't have any place 24 to go with all the mediums. They don't have a 25 place to go with all the jumbos, if they all are</p>	<p style="text-align: right;">Page 165</p> <p>1 that's the case? 2 A. I'm not sure that I understand the 3 question. 4 Q. Well, are the prices of specialty 5 eggs less volatile, in your experience, than the 6 prices for commodity eggs? 7 A. Yes, sir. 8 Q. Why is that the case? 9 MR. ROBISON: 10 Objection. No foundation. 11 A. In the case of Cal-Maine, they're not 12 tagged to a market, pegged to a market price, so 13 they're not as volatile. They're not pegged to 14 Urner Barry. 15 MR. SCHIRMER: 16 Q. Are they sold on a cost-plus basis? 17 A. I would say no, not in the 18 traditional thoughts of cost plus. 19 Q. Do you handle -- are you responsible 20 for negotiating the sales of specialty eggs for 21 Cal-Maine? 22 A. Some brands. 23 Q. Are you ultimately responsible for 24 all the sales of specialty eggs for Cal-Maine? 25 A. Yes, sir.</p>

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<p style="text-align: right;">Page 166</p> <p>1 Q. You just said, "not in the 2 traditional sense." What do you mean by it's 3 not a cost-plus basis in the traditional sense? 4 A. Well, I started out working with 5 McDonald's on cost plus, okay? And so -- and it 6 was purely whatever the costs were to get the 7 egg out of the chicken house and into the 8 package, into their distribution locations, plus 9 a margin that was negotiated. 10 I have other relationships like that 11 now, where it's purely pegged to cost plus a 12 margin that's negotiated. 13 Typically, in our specialty business, 14 I don't negotiate that margin with anyone. I 15 decide what it's going to be, and then I let 16 competition take over. If I can -- if 17 somebody's cutting my price, then I've got to 18 adjust on my specialty, just like on commodity, 19 but it's just not as volatile. 20 We build brands. Tide detergent 21 don't move every day. Farmhouse eggs don't move 22 every day. 23 Q. What do you mean, you build brands? 24 A. Well, this is about -- specialty 25 segment is about brand building, and that's what</p>	<p style="text-align: right;">Page 168</p> <p>1 in a bit, but not right away. 2 Q. Exhibit 31, which was marked 3 yesterday, number 31, is a printout from 4 Cal-Maine Foods' website. If you'll look up in 5 the right-hand corner, it's got website. I 6 think that's your website address, right? 7 A. Yes, sir. 8 Q. And it's one of three documents. And 9 it's printed out, according to the lower 10 right-hand corner -- I hope the machine -- the 11 machine printed it -- April 2, 2014, at 5:26 12 p.m. 13 A. Okay. 14 Q. Have you seen this before? 15 A. Sure. 16 Q. Okay. Would you please turn to the 17 last page of it? 18 A. Yes, sir. 19 Q. I take it back. Go to the second to 20 the last page. Something we were talking about 21 earlier I wanted to make sure I understand. 22 A. Okay. 23 Q. About -- I don't know. In the lower 24 part of the page, it's something that's called 25 "Molting Program," right before "Pullet" and</p>
<p style="text-align: right;">Page 167</p> <p>1 we do in our specialty segment -- or national 2 brand segment. So it's like Tide detergent or 3 Mentoos or Shell gasoline. You know, you're 4 trying to build a brand is all you're doing. 5 Q. You've just been talking about 6 brands. Does Cal-Maine have any trademark 7 brands? 8 A. Yes, sir. 9 Q. What are they? 10 A. Farmhouse, 4-Grain, Sunups and 11 Sunny Meadow are the four that I can recall. 12 Maybe Rio Grande. 13 Q. Are those all specialty egg brands? 14 A. No, sir. There's a couple of 15 conventional brands in there. 16 Q. Which would be the conventional 17 brands? 18 A. Sunups and Sunny Meadow. 19 Q. But your specialty egg brands are 20 sold on the basis of cost plus margin at 21 competition? 22 A. Yes, sir. 23 MR. SCHIRMER: 24 Would you please hand him Exhibit 31. 25 And then I'm going ask him about 33, 34, and 35</p>	<p style="text-align: right;">Page 169</p> <p>1 after "Molt." 2 A. Yes, sir. 3 Q. It says -- it describes a molting 4 program as: "A six-week period that 5 deliberately causes a flock to begin a molt." 6 A. Yes, sir. 7 Q. And: "This is done by controlling 8 the diet until certain weight goals are 9 reached." 10 A. Yes, sir. 11 Q. Is that your understanding of how 12 Cal-Maine currently performs its molting 13 program? 14 A. Yes, sir. 15 Q. And a molt is -- explain what a molt 16 is for me. 17 A. I couldn't. 18 Q. Don't know. Okay. Do you have an 19 understanding as to whether Cal-Maine has always 20 engaged in its molting program simply by feeding 21 them different stuff? 22 A. No, I'm not qualified to answer that. 23 Q. Okay. Fair enough. 24 A. Sorry. 25 Q. Please turn to the next page.</p>

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<p style="text-align: right;">Page 170</p> <p>1 There's not very many entries on this one, but I 2 want you to look at the third one from the 3 bottom. 4 A. Yes, sir. 5 Q. "UEP Certified." 6 A. Yes, sir. 7 Q. It says: "Guidelines developed by 8 the United Egg Producers scientific committee." 9 A. Yes, sir. 10 Q. Do you have an understanding of the 11 requirements for the UEP certified program? 12 A. Yes, sir. 13 Q. What are some of those requirements 14 that you understand as -- what is your 15 understanding of some of the requirements of the 16 program? 17 A. Well, it's an animal husbandry 18 program. It's a program about the animal that 19 was developed originally as the ACC program. 20 As far as requirements of it, there 21 are particular ways to handle the hen, 22 particular ways to go about molting, particular 23 levels of -- ammonia level in the chicken 24 houses, beak trimming. There's some 25 restrictions on beak trimming. But the -- I</p>	<p style="text-align: right;">Page 172</p> <p>1 probably '12, something like -- well, it might 2 have been earlier than that. 3 Q. Might you have completed it in the 4 year 2008? That long ago? 5 A. I can't remember. But we went from 6 something like 48 to 53 to 67 required now. 7 (Exhibit 68 marked.) 8 Q. I'm showing what you has been marked 9 as Exhibit 68. It bears production number 10 CM00183394 through 396. 11 A. Yes, sir. 12 Q. Why don't you have a look at it real 13 quick. 14 A. Okay. 15 Q. Do you recognize this document? 16 A. I don't specifically recognize it, 17 but it's an agenda for an UEP conference on 18 animal welfare. I remember being there. 19 Q. Yeah. You were listed as one of the 20 people who was there, Jeff Hardin. 21 A. Yes, sir. Yes, sir, uh-huh. 22 Q. Is this the one -- the meeting you 23 were talking about earlier on animal welfare, 24 where you went with one of your customers? 25 A. I remember this one. I don't know</p>
<p style="text-align: right;">Page 171</p> <p>1 guess probably the most prominent one, and the 2 one that caused the biggest stir when it was all 3 starting, was the square inches requirement. 4 Q. What is the square inches 5 requirement, in your understanding? 6 A. As it exists today or back in this 7 time -- back in -- in general? 8 Q. In general. 9 A. It's an allocation of how much space 10 we are allowed under the ACC or FMI program to 11 give the hens. 12 Q. And you said as it began and as it is 13 now. What is the difference between as it began 14 and as it is now? 15 A. Well, when it began in the late 16 nineties, early 2000's, whenever it was, most 17 producers would have been on something between 18 48 and 53 square inches of cage space per hen. 19 And this program that was developed 20 with FMI and UEP was to increase that cage space 21 allocation over time. 22 Q. And is it your understanding that has 23 happened? 24 A. Yes, sir. That's been going on -- I 25 can't remember what year we completed it, but</p>	<p style="text-align: right;">Page 173</p> <p>1 that I was talking about that one specifically 2 earlier, but I remember this one specifically 3 because I had several customers there. I just 4 happened to be hosting one of them. 5 Q. Do you remember any of what went on 6 at that conference? 7 A. I couldn't tell you specifically 8 about each one of these things, but the 9 intent -- I can tell you the intent, but I don't 10 remember the specific discussion. 11 Q. What was the intent of this in 12 general, of the program in general? 13 A. The intent, as I recall it, was to 14 expose, at a buyer level or category manager 15 level, what the FMI program was. 16 Q. Well, do you have an understanding of 17 whether the FMI program and the UEP certified 18 program are the same thing? 19 A. Oh, yes, sir. It's the same thing. 20 I'm sorry. 21 Q. That's your understanding? 22 A. Yes, sir. 23 Q. You can put that away. 24 A. Okay. 25 Q. Would you please take out what was</p>

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<p style="text-align: right;">Page 174</p> <p>1 marked yesterday as Exhibit 33.</p> <p>2 A. Okay.</p> <p>3 Q. I think you want to look -- maybe you</p> <p>4 know what it is already. What is it?</p> <p>5 A. Well, this is the Michigan State</p> <p>6 study.</p> <p>7 Q. And the front page is a Cal-A-Gram</p> <p>8 from Dolph Baker to you, among others?</p> <p>9 A. Yes, sir.</p> <p>10 Q. What was the purpose of Mr. Baker</p> <p>11 giving you this study; do you remember?</p> <p>12 A. It was to -- so I could learn and</p> <p>13 understand what the costs associated with</p> <p>14 starting the animal -- the FMI animal welfare</p> <p>15 program was about. So it highlighted the costs.</p> <p>16 Q. Okay. One of the things it</p> <p>17 highlights is the cost.</p> <p>18 A. Yes, sir, along with other things.</p> <p>19 Obviously, there's the bird handling and the</p> <p>20 ammonia control and all those types of things,</p> <p>21 but one of the things was the costs.</p> <p>22 Q. He also discusses the things like the</p> <p>23 economics of the market, including the</p> <p>24 elasticities of demand. If you look at page 8</p> <p>25 on this -- of the document --</p>	<p style="text-align: right;">Page 176</p> <p>1 your customers?</p> <p>2 A. Probably every one of any</p> <p>3 significance. It went as a package when I took</p> <p>4 it to them, this and some other stuff.</p> <p>5 Q. And you used it to explain what would</p> <p>6 be the effect of the program or some of the</p> <p>7 costs.</p> <p>8 A. Absolutely. Sure.</p> <p>9 Q. You can put that away.</p> <p>10 A. Okay.</p> <p>11 Q. Would you please have a look at --</p> <p>12 MR. SCHIRMER:</p> <p>13 Get Exhibits 33 and 34. See if we</p> <p>14 can get through this quickly.</p> <p>15 A. 33 again?</p> <p>16 Q. 34 and 35.</p> <p>17 A. Okay.</p> <p>18 Q. Let's start with number 34.</p> <p>19 A. Yes, sir.</p> <p>20 Q. Number 34 is a document Bates</p> <p>21 numbered NL00212764 through 766.</p> <p>22 A. Yes, sir.</p> <p>23 Q. What is it?</p> <p>24 A. It's a communication within our Eggs</p> <p>25 America co-op that we would typically use with</p>
<p style="text-align: right;">Page 175</p> <p>1 A. Yes, sir.</p> <p>2 Q. -- in the upper right-hand corner.</p> <p>3 MR. ROBISON:</p> <p>4 Object to form.</p> <p>5 A. It's talking about -- I'm sorry.</p> <p>6 MR. SCHIRMER:</p> <p>7 Q. Under conclusion --</p> <p>8 A. Under conclusions.</p> <p>9 Q. -- he says -- in the middle of the</p> <p>10 paragraph it says: "Estimates of the price</p> <p>11 elasticity of demand for eggs typically fall in</p> <p>12 the minus .12 to minus .08 range. This</p> <p>13 indicates that, in the short run before</p> <p>14 additional cage space could be constructed and</p> <p>15 the supply response realized egg prices could</p> <p>16 increase 8 to 12 percent for every 1 percent egg</p> <p>17 supplies are reduced." You see that?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And do you remember reading this when</p> <p>20 Mr. Baker gave it to you?</p> <p>21 A. Oh, absolutely.</p> <p>22 Q. And Mr. Baker says on the front that</p> <p>23 this appears to cover all the bases and could be</p> <p>24 a good tool to use when visiting customers.</p> <p>25 Did you ever provide this to any of</p>	<p style="text-align: right;">Page 177</p> <p>1 customers that were inquiring about why egg</p> <p>2 prices are moving.</p> <p>3 Q. So the last page is the communication</p> <p>4 that you would typically use when customers were</p> <p>5 asking at this point in time why prices were so</p> <p>6 high?</p> <p>7 MR. ROBISON:</p> <p>8 Object to form.</p> <p>9 A. It may be this. It may be some other</p> <p>10 form. It's not particularly this form. It</p> <p>11 might be a -- lots of different ways to</p> <p>12 communicate it. Might be other activity going</p> <p>13 on.</p> <p>14 This just happened to be the one that</p> <p>15 Roger prepared or somebody prepared for '06, for</p> <p>16 fall of '06.</p> <p>17 MR. SCHIRMER:</p> <p>18 Q. Do you remember whether you ever used</p> <p>19 this communication with any of your customers?</p> <p>20 A. I don't.</p> <p>21 Q. Would you look at -- on that last</p> <p>22 page, industry standards -- it says: "The egg</p> <p>23 market has risen strongly over the past few</p> <p>24 weeks." On the top of the last page. Do you</p> <p>25 see that at the top?</p>

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<p style="text-align: right;">Page 178</p> <p>1 A. Yes, sir.</p> <p>2 Q. And it says: "Several factors have</p> <p>3 contributed to the situation."</p> <p>4 A. Uh-huh.</p> <p>5 Q. A. are a significant demand increase</p> <p>6 during the November-December holiday period?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Is that consistent with your</p> <p>9 understanding of what happens during the</p> <p>10 November-December holiday period in general?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Number C. says: "Industry standards</p> <p>13 for space allocations are increasing with time.</p> <p>14 Another milestone was passed October 1. As each</p> <p>15 chicken is given more space the number of</p> <p>16 chickens that a given facility can hold is</p> <p>17 reduced. Therefore, fewer chickens lead to</p> <p>18 fewer eggs which leads to upward price</p> <p>19 pressure."</p> <p>20 Is that consistent with your</p> <p>21 understanding at the time, sir --</p> <p>22 A. Oh, absolutely.</p> <p>23 Q. -- what was happening at the time?</p> <p>24 A. Absolutely. And along with B. and</p> <p>25 D., probably, but -- but A., B. -- I don't</p>	<p style="text-align: right;">Page 180</p> <p>1 Q. Good afternoon, Mr. Hardin. My name</p> <p>2 is Patrick Ahern. I represent Winn-Dixie</p> <p>3 Stores, Inc.; C&S Wholesale Grocers, Inc.;</p> <p>4 Roundie's Supermarkets, Inc.; and, Heinz, LLP.</p> <p>5 A. Okay.</p> <p>6 Q. I'm going to ask you a few questions.</p> <p>7 Mr. Hardin, Mr. Paramore retired in</p> <p>8 September of 2008, approximately?</p> <p>9 A. Okay. I don't remember, but --</p> <p>10 Q. Okay. And -- that's what he told us</p> <p>11 yesterday.</p> <p>12 A. Okay.</p> <p>13 Q. Okay. And he -- Winn-Dixie was an</p> <p>14 account of Mr. Paramore's up to that time; is</p> <p>15 that correct?</p> <p>16 A. Yes, sir.</p> <p>17 Q. Okay. Did you have any contact or</p> <p>18 communications with Winn-Dixie as a Cal-Maine</p> <p>19 customer?</p> <p>20 A. I'm not sure. I'm not sure. There</p> <p>21 was a New Orleans division that was kind of over</p> <p>22 my part of the world, so I can't say for sure.</p> <p>23 Q. After Mr. Paramore retired, did you</p> <p>24 have any contact or communications with</p> <p>25 Winn-Dixie as a Cal-Maine customer?</p>
<p style="text-align: right;">Page 179</p> <p>1 remember any export activity. I don't recall</p> <p>2 any of it. But A., B., and C. for sure, and I</p> <p>3 was communicating that to customers every day.</p> <p>4 MR. SCHIRMER:</p> <p>5 I don't have anything else right now.</p> <p>6 MR. ROBISON:</p> <p>7 You guys have anything?</p> <p>8 MR. AHERN:</p> <p>9 I will. I think Patrick's going</p> <p>10 before me, though.</p> <p>11 MR. SCHIRMER:</p> <p>12 Why don't we take a really brief</p> <p>13 break.</p> <p>14 MR. ROBISON:</p> <p>15 Taking a short break to switch</p> <p>16 questioners.</p> <p>17 VIDEOGRAPHER:</p> <p>18 We are off the record. The time is</p> <p>19 2:19 p.m.</p> <p>20 (Off the record.)</p> <p>21 VIDEOGRAPHER:</p> <p>22 We're now going back on the record.</p> <p>23 The time is 2:29 p.m.</p> <p>24 CROSS-EXAMINATION</p> <p>25 BY MR. AHERN:</p>	<p style="text-align: right;">Page 181</p> <p>1 A. Not until probably fairly recently,</p> <p>2 since they joined the Topco cooperative.</p> <p>3 Q. Okay. And you've had communications</p> <p>4 with Winn-Dixie directly after they joined Topco</p> <p>5 started using Topco?</p> <p>6 A. Not directly with Winn-Dixie, no.</p> <p>7 Q. You've had your communications with</p> <p>8 Topco --</p> <p>9 A. Since that -- yes.</p> <p>10 Q. -- is that correct?</p> <p>11 A. Correct.</p> <p>12 Q. All right. Now, I want to mark as</p> <p>13 the next exhibit, so Exhibit 69 --</p> <p>14 MR. AHERN:</p> <p>15 And since this is a Complaint in the</p> <p>16 case, unfortunately I just have the witness's</p> <p>17 copy. I apologize. It is the Complaint that</p> <p>18 Publix Super Markets filed in this action on</p> <p>19 November 16, 2010.</p> <p>20 MR. ROBISON:</p> <p>21 I don't have an Exhibit 68.</p> <p>22 MR. AHERN:</p> <p>23 She just gave me 69, so --</p> <p>24 MR. ROBISON:</p> <p>25 Okay.</p>

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<p style="text-align: right;">Page 182</p> <p>1 (Exhibit 69 marked.)</p> <p>2 MR. AHERN:</p> <p>3 Q. Mr. Hardin, I'm handing you what's</p> <p>4 been marked as Exhibit 69. And this is a copy</p> <p>5 of the Complaint by Publix in this case. Have</p> <p>6 you seen this document before?</p> <p>7 A. I'm not sure that I've seen the</p> <p>8 Publix, but I've seen one of them.</p> <p>9 Q. Okay. When was the first time that</p> <p>10 you saw --</p> <p>11 A. In preparation for this deposition.</p> <p>12 Q. Had you seen it before that?</p> <p>13 A. No, sir. Probably not.</p> <p>14 Q. You see the date at the top of this</p> <p>15 is November 16, 2010? At the very, very top,</p> <p>16 11-16-2010?</p> <p>17 A. Yes, sir.</p> <p>18 Q. After that period of time, did</p> <p>19 Cal-Maine stop selling UEP-certified eggs to</p> <p>20 Kroger?</p> <p>21 A. No, sir.</p> <p>22 Q. Safeway?</p> <p>23 A. No, sir.</p> <p>24 Q. Albertsons?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">Page 184</p> <p>1 2010, did Cal-Maine start selling non-UEP</p> <p>2 certified eggs to Kroger?</p> <p>3 A. No, sir.</p> <p>4 Q. Safeway?</p> <p>5 A. No, sir.</p> <p>6 Q. Albertsons?</p> <p>7 A. No, sir.</p> <p>8 Q. H-E-B?</p> <p>9 A. No, sir.</p> <p>10 Q. A&P?</p> <p>11 A. No, sir.</p> <p>12 Q. Publix?</p> <p>13 A. No, sir.</p> <p>14 Q. Kraft Foods?</p> <p>15 A. Not a customer.</p> <p>16 Q. General Mills?</p> <p>17 A. Not a customer.</p> <p>18 Q. Walgreens?</p> <p>19 A. No, sir.</p> <p>20 Q. SUPERVALU?</p> <p>21 A. No, sir.</p> <p>22 Q. Winn-Dixie?</p> <p>23 A. No, sir.</p> <p>24 Q. C&S Wholesale Grocers?</p> <p>25 A. No, sir.</p>
<p style="text-align: right;">Page 183</p> <p>1 Q. H-E-B?</p> <p>2 A. No, sir.</p> <p>3 Q. A&P?</p> <p>4 A. No, sir. Well, I don't know that I</p> <p>5 ever sold anything to A&P except specialty eggs.</p> <p>6 Q. Publix?</p> <p>7 A. No, sir.</p> <p>8 Q. Kraft Foods?</p> <p>9 A. Never sold Kraft to my knowledge.</p> <p>10 Q. General Mills?</p> <p>11 A. Never sold to them either to my</p> <p>12 knowledge.</p> <p>13 Q. Walgreens?</p> <p>14 A. No, sir.</p> <p>15 Q. SUPERVALU?</p> <p>16 A. No, sir.</p> <p>17 Q. Winn-Dixie?</p> <p>18 A. No, sir.</p> <p>19 Q. C&S Wholesale Grocers?</p> <p>20 A. I'm not sure I sold anything to C&S</p> <p>21 except specialty.</p> <p>22 Q. Hy-Vee?</p> <p>23 A. Was not a customer of mine.</p> <p>24 Q. After the complaints were filed, the</p> <p>25 initial complaints were filed in November of</p>	<p style="text-align: right;">Page 185</p> <p>1 Q. Hy-Vee?</p> <p>2 A. Not a customer.</p> <p>3 Q. After the complaints were filed in</p> <p>4 November of 2010, did you personally ask any --</p> <p>5 did you personally ask Kroger whether it wanted</p> <p>6 to buy non-UEP certified eggs?</p> <p>7 A. No, sir.</p> <p>8 Q. Safeway?</p> <p>9 A. Did I ask them?</p> <p>10 Q. Yes. If they wanted to buy non-UEP</p> <p>11 certified eggs. Did you ask anyone at Safeway?</p> <p>12 A. No, sir. It'd have been crazy to.</p> <p>13 Q. Albertsons?</p> <p>14 A. No, sir.</p> <p>15 Q. H-E-B?</p> <p>16 A. No, sir.</p> <p>17 Q. A&P?</p> <p>18 A. No, sir.</p> <p>19 Q. Publix?</p> <p>20 A. No, sir.</p> <p>21 Q. Kraft Foods?</p> <p>22 A. No, sir.</p> <p>23 Q. General Mills?</p> <p>24 A. No, sir.</p> <p>25 Q. Walgreens?</p>

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<p style="text-align: right;">Page 186</p> <p>1 A. No, sir.</p> <p>2 Q. SUPERVALU?</p> <p>3 A. No, sir.</p> <p>4 Q. Winn-Dixie?</p> <p>5 A. No, sir.</p> <p>6 Q. C&S Wholesale Grocers?</p> <p>7 A. No, sir.</p> <p>8 Q. Hy-Vee?</p> <p>9 A. No, sir.</p> <p>10 Q. Did anyone at Cal-Maine ask Kroger</p> <p>11 whether it wanted to buy non-UEP certified eggs?</p> <p>12 MR. ROBISON:</p> <p>13 Objection. Foundation.</p> <p>14 MR. AHERN:</p> <p>15 Q. To your knowledge?</p> <p>16 A. No, sir.</p> <p>17 Q. Safeway?</p> <p>18 A. No, sir.</p> <p>19 Q. Albertsons?</p> <p>20 A. No, sir.</p> <p>21 Q. H-E-B?</p> <p>22 A. No, sir.</p> <p>23 Q. A&P?</p> <p>24 A. No, sir.</p> <p>25 Q. Publix?</p>	<p style="text-align: right;">Page 188</p> <p>1 purchasing eggs produced under the UEP certified</p> <p>2 program?</p> <p>3 A. No, sir.</p> <p>4 Q. Safeway?</p> <p>5 A. There wasn't a question about it.</p> <p>6 Q. Safeway?</p> <p>7 A. No, sir.</p> <p>8 Q. Albertsons?</p> <p>9 A. No, sir.</p> <p>10 Q. H-E-B?</p> <p>11 A. No, sir.</p> <p>12 Q. A&P?</p> <p>13 A. No, sir.</p> <p>14 Q. Publix?</p> <p>15 A. No, sir.</p> <p>16 Q. Kraft Foods?</p> <p>17 A. None of them.</p> <p>18 Q. None of them.</p> <p>19 A. No.</p> <p>20 Q. General Mills? I got to go through</p> <p>21 them all. I'm sorry.</p> <p>22 A. Okay, okay.</p> <p>23 Q. Walgreens?</p> <p>24 A. No, sir.</p> <p>25 Q. SUPERVALU?</p>
<p style="text-align: right;">Page 187</p> <p>1 A. No, sir.</p> <p>2 Q. Kraft Foods?</p> <p>3 A. No, sir.</p> <p>4 Q. General Mills?</p> <p>5 A. Again, some of those are not my</p> <p>6 customers, but no.</p> <p>7 Q. Walgreens?</p> <p>8 A. No, sir.</p> <p>9 Q. SUPERVALU?</p> <p>10 A. No, sir.</p> <p>11 Q. Winn-Dixie?</p> <p>12 A. No, sir.</p> <p>13 Q. C&S Wholesale Grocers?</p> <p>14 A. No, sir.</p> <p>15 Q. Hy-Vee?</p> <p>16 A. No, sir.</p> <p>17 Q. When you say some of them are not</p> <p>18 your customers, you mean Cal-Maine sold to them</p> <p>19 but they weren't your customers?</p> <p>20 A. No. You mentioned some that --</p> <p>21 they're just not Cal-Maine customers.</p> <p>22 Q. Okay. I understand. I understand.</p> <p>23 After the Complaints were filed in</p> <p>24 November of 2010, did you personally ask Kroger</p> <p>25 whether it wanted Cal-Maine to discontinue</p>	<p style="text-align: right;">Page 189</p> <p>1 A. No, sir.</p> <p>2 Q. Winn-Dixie?</p> <p>3 A. No, sir.</p> <p>4 Q. C&S Wholesale Grocers?</p> <p>5 A. No, sir.</p> <p>6 Q. Hy-Vee?</p> <p>7 A. No, sir.</p> <p>8 Q. To your knowledge, did anybody at</p> <p>9 Cal-Maine ask Kroger if it wanted Cal-Maine to</p> <p>10 discontinue purchasing eggs -- I'm sorry, if it</p> <p>11 wanted -- strike that.</p> <p>12 To your knowledge, did anybody at</p> <p>13 Cal-Maine ask anyone at Kroger if Kroger wanted</p> <p>14 to discontinue purchasing eggs from Cal-Maine</p> <p>15 produced under the UEP certified program?</p> <p>16 A. I'm sorry, Pat, ask me that again.</p> <p>17 Q. Did anyone at Cal-Maine ask anyone at</p> <p>18 Kroger if Kroger wanted to discontinue</p> <p>19 purchasing eggs from Cal-Maine produced under</p> <p>20 the UEP certified program?</p> <p>21 MR. ROBISON:</p> <p>22 Objection. Foundation.</p> <p>23 A. I'm still not sure I'm quite</p> <p>24 understanding the question, but --</p> <p>25 MR. AHERN:</p>

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<p style="text-align: right;">Page 190</p> <p>1 Q. Well, let me rephrase it.</p> <p>2 A. Okay.</p> <p>3 Q. Let me try it again. Did anyone at</p> <p>4 Cal-Maine --</p> <p>5 A. Cal-Maine, okay.</p> <p>6 Q. -- ask anyone at Kroger --</p> <p>7 A. Okay.</p> <p>8 Q. -- if Kroger wanted to stop</p> <p>9 purchasing eggs from Cal-Maine that were</p> <p>10 produced under the UEP certified program?</p> <p>11 MR. ROBISON:</p> <p>12 Objection. No foundation.</p> <p>13 A. No, sir. I'm sorry. No. I mean,</p> <p>14 there was no question or reason to ask.</p> <p>15 MR. AHERN:</p> <p>16 Q. Safeway?</p> <p>17 A. No, sir.</p> <p>18 Q. Albertsons?</p> <p>19 A. No, sir.</p> <p>20 Q. H-E-B?</p> <p>21 A. No, sir.</p> <p>22 Q. A&P?</p> <p>23 A. No, sir.</p> <p>24 Q. Publix?</p> <p>25 A. No, sir.</p>	<p style="text-align: right;">Page 192</p> <p>1 been shocked.</p> <p>2 Q. Okay.</p> <p>3 A. Okay.</p> <p>4 Q. Beyond that, anything else?</p> <p>5 A. No.</p> <p>6 Q. Okay. You didn't think, hey, wait a</p> <p>7 minute, you know, these guys asked for this</p> <p>8 program? You didn't think that to yourself?</p> <p>9 A. That's what I mean by shocked.</p> <p>10 Q. Okay. But you didn't talk to anybody</p> <p>11 about that?</p> <p>12 MR. ROBISON:</p> <p>13 Object to form. Mischaracterizes.</p> <p>14 MR. AHERN:</p> <p>15 Q. You didn't talk to any customer about</p> <p>16 that, correct?</p> <p>17 A. I wouldn't have talked to a customer</p> <p>18 about why did you sue me. That wasn't my job.</p> <p>19 Q. Are you aware of there being any</p> <p>20 internal discussions at Cal-Maine about these</p> <p>21 complaints after they were filed? Not</p> <p>22 involving --</p> <p>23 MR. ROBISON:</p> <p>24 Not with lawyers.</p> <p>25 MR. AHERN:</p>
<p style="text-align: right;">Page 191</p> <p>1 Q. Kraft Foods?</p> <p>2 A. No, sir.</p> <p>3 Q. General Mills?</p> <p>4 A. No, sir.</p> <p>5 Q. Walgreens?</p> <p>6 A. No, sir.</p> <p>7 Q. SUPERVALU?</p> <p>8 A. No, sir.</p> <p>9 Q. Winn-Dixie?</p> <p>10 A. No, sir.</p> <p>11 Q. C&S Wholesale Grocers?</p> <p>12 A. No, sir.</p> <p>13 Q. Hy-Vee?</p> <p>14 A. No, sir.</p> <p>15 Q. When the initial Complaints were</p> <p>16 filed in November of 2010, did you have any</p> <p>17 discussions with anyone at Cal-Maine about the</p> <p>18 filing of the Complaints?</p> <p>19 A. Not that I recall. I'm sure I knew</p> <p>20 about it, but I don't remember any discussions</p> <p>21 about it.</p> <p>22 Q. Did you personally have any reaction</p> <p>23 to the complaints, the news that the complaints</p> <p>24 were filed?</p> <p>25 A. I'm sure I did because I would have</p>	<p style="text-align: right;">Page 193</p> <p>1 Q. Not involving discussions with</p> <p>2 counsel.</p> <p>3 A. I remember my boss telling me that</p> <p>4 these guys had filed Complaints against us for</p> <p>5 the FMI program, but, beyond that, it was pretty</p> <p>6 much stayed with Dolph and at corporate level.</p> <p>7 MR. AHERN:</p> <p>8 Q. Did Dolph say anything else to you</p> <p>9 about it?</p> <p>10 A. I don't remember anything</p> <p>11 specifically.</p> <p>12 Q. You've reviewed one of these</p> <p>13 Complaints in preparation for your deposition;</p> <p>14 is that correct?</p> <p>15 A. Yes, sir.</p> <p>16 Q. You understand that the Complaints</p> <p>17 challenge more than just the UEP certified</p> <p>18 program, correct?</p> <p>19 A. Okay. Yes.</p> <p>20 Q. Is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. You understand that the Complaints</p> <p>23 challenge chick hatch reductions?</p> <p>24 A. I read that in the Complaint, yes.</p> <p>25 Q. Okay. And decisions to molt early</p>

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<p style="text-align: right;">Page 194</p> <p>1 independent of the UEP certified program, 2 correct? 3 A. I read that in the suit, yes. 4 Q. All right. And you also understand 5 that the Complaint challenges conduct relating 6 to egg exports? 7 A. I read that in the suit, yes. 8 Q. After the Complaints were filed in 9 November of 2010, did you ask Kroger whether it 10 wanted Cal-Maine to discontinue egg exports made 11 through the USEM? 12 A. No, sir. 13 Q. Safeway? 14 A. No, sir. 15 Q. Albertsons? 16 A. No, sir. 17 Q. H-E-B? 18 A. No, sir. 19 Q. A&P? 20 A. No, sir. 21 Q. Publix? 22 A. No, sir. 23 Q. Kraft Foods? 24 A. No, sir. 25 Q. General Mills?</p>	<p style="text-align: right;">Page 196</p> <p>1 A. No, sir. 2 Q. Kraft Foods? 3 A. No, sir. 4 Q. General Mills? 5 A. No, sir. 6 Q. Walgreens? 7 A. No, sir. 8 Q. SUPERVALU? 9 A. No, sir. 10 Q. Winn-Dixie? 11 A. No, sir. 12 Q. C&S Wholesale Grocers? 13 A. No, sir. 14 Q. Hy-Vee? 15 A. No, sir. 16 Q. Even though you didn't see a copy of 17 the Complaint back when they were filed, you did 18 learn about the Complaints being filed, correct, 19 back in 2010? 20 A. I knew that -- well, I guess the 21 first one that I really knew about was the 22 class. 23 Q. Okay. And that was earlier. 24 A. That was sometime earlier. 25 Q. Right.</p>
<p style="text-align: right;">Page 195</p> <p>1 A. No, sir. 2 Q. Walgreens? 3 A. No, sir. 4 Q. SUPERVALU? 5 A. No, sir. 6 Q. Winn-Dixie? 7 A. No, sir. 8 Q. C&S Wholesale Grocers? 9 A. No, sir. 10 Q. Hy-Vee? 11 A. No, sir. 12 Q. Do you know whether anyone at 13 Cal-Maine ever asked Kroger whether it wanted 14 Cal-Maine to discontinue any egg exports made 15 through USEM? 16 A. No, sir. 17 Q. Safeway? 18 A. No, sir. 19 Q. Albertsons? 20 A. No, sir. 21 Q. H-E-B? 22 A. No, sir. 23 Q. A&P? 24 A. No, sir. 25 Q. Publix?</p>	<p style="text-align: right;">Page 197</p> <p>1 A. And then I probably learned about the 2 DAPS at some point in the -- you know, after 3 this -- after this point and, like I said, was 4 shocked. 5 Q. You've got the terminology down. 6 A. I've heard a lot about it in the last 7 few days. 8 Q. Unfortunately. 9 A. Unfortunately, yeah. 10 Q. Unfortunately for you. 11 So from the time that the first 12 Complaints were filed, you knew that the DAPS, 13 the D-A-Ps, were challenging in part the 14 legality of the UEP certified program, correct? 15 MR. ROBISON: 16 Object to form. 17 A. I was shocked to learn, with as many 18 questions as I got, that they were challenging 19 the FMI program. 20 MR. AHERN: 21 Q. Okay. And you call it the FMI 22 program -- 23 A. Right. 24 Q. -- but isn't it true -- and Mr. 25 Holladay may have taken me to task a little bit</p>

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<p style="text-align: right;">Page 198</p> <p>1 yesterday about this, but I understand that</p> <p>2 sometimes it's called -- sometimes people refer</p> <p>3 to it in different terms, but I always</p> <p>4 understood that, at least on the UEP website,</p> <p>5 it's called the UEP certified program, correct?</p> <p>6 A. Well, I think it is today, but back</p> <p>7 in the -- back when it first came out and when I</p> <p>8 was first going to show it to my level -- you</p> <p>9 know, everybody at the upper levels of</p> <p>10 management at these companies were on the board</p> <p>11 of FMI. They knew what was going on. So this</p> <p>12 was -- my part was to go in underneath that and</p> <p>13 show it to the folks at the category management</p> <p>14 level.</p> <p>15 Their bosses had referred to it as</p> <p>16 the FMI program. We had referred to it as the</p> <p>17 FMI first -- the Animal Care Certified, ACC, I</p> <p>18 think.</p> <p>19 Q. The ACC, right.</p> <p>20 A. -- was what it -- so originally in my</p> <p>21 mind it was the FMI ACC program.</p> <p>22 Q. I see. And to your understanding,</p> <p>23 who came up with the name Animal Care Certified</p> <p>24 for the program?</p> <p>25 A. I have no idea.</p>	<p style="text-align: right;">Page 200</p> <p>1 A. I knew we were being sued over some</p> <p>2 element of it, but I didn't know exactly what or</p> <p>3 why.</p> <p>4 Q. Okay. Now, let's go back to the time</p> <p>5 period of 2000 through 2008, okay?</p> <p>6 A. Okay.</p> <p>7 Q. During that time period did you ever</p> <p>8 tell a customer that Cal-Maine had agreed to</p> <p>9 follow a UEP recommendation that it reduce its</p> <p>10 chick hatch by 5 percent?</p> <p>11 MR. ROBISON:</p> <p>12 Object to form. Assumes facts.</p> <p>13 A. Ask me that again, Pat, I'm sorry.</p> <p>14 MR. AHERN:</p> <p>15 Q. From 2000 to 2008, did you ever tell</p> <p>16 a customer that Cal-Maine had agreed to follow a</p> <p>17 UEP recommendation that it reduce its chick</p> <p>18 hatch by 5 percent?</p> <p>19 MR. ROBISON:</p> <p>20 Same.</p> <p>21 A. To answer your question, no, I never</p> <p>22 told a customer that because it was self-evident</p> <p>23 that it was going to have to happen.</p> <p>24 MR. AHERN:</p> <p>25 Q. Well, so the answer is no, you never</p>
<p style="text-align: right;">Page 199</p> <p>1 Q. Okay. Do you know whether it was UEP</p> <p>2 on its own?</p> <p>3 MR. ROBISON:</p> <p>4 Objection.</p> <p>5 A. No, sir, I don't.</p> <p>6 MR. AHERN:</p> <p>7 Q. You don't know.</p> <p>8 A. I'm sorry.</p> <p>9 Q. You don't know one way or the other?</p> <p>10 A. I don't. I just read the FMI press</p> <p>11 releases at the time.</p> <p>12 Q. But from the time that you -- from</p> <p>13 certainly in November of 2010, you knew that the</p> <p>14 direct action plaintiffs were challenging the</p> <p>15 legality of the UEP certified program, correct?</p> <p>16 MR. ROBISON:</p> <p>17 Objection. Foundation.</p> <p>18 Mischaracterizes.</p> <p>19 A. I don't know that I ever knew that</p> <p>20 they were challenging the foundation of the FMI</p> <p>21 program. I knew that there was some conflict</p> <p>22 about it, but I didn't know what it was.</p> <p>23 MR. AHERN:</p> <p>24 Q. Well, you knew you were being sued</p> <p>25 over it.</p>	<p style="text-align: right;">Page 201</p> <p>1 told a customer that.</p> <p>2 A. No. It was self-evident.</p> <p>3 Q. All right. But my question is, did</p> <p>4 you tell a customer, and your answer is --</p> <p>5 MR. ROBISON:</p> <p>6 Asked and answered.</p> <p>7 MR. AHERN:</p> <p>8 Q. -- and your answer is no, correct?</p> <p>9 MR. ROBISON:</p> <p>10 Asked and answered.</p> <p>11 A. I'm sorry, Pat. I'm sure I'm</p> <p>12 misunderstanding the question.</p> <p>13 MR. AHERN:</p> <p>14 Q. Did you ever tell a customer that</p> <p>15 Cal-Maine had agreed to follow a UEP</p> <p>16 recommendation that it reduce its chick hatch by</p> <p>17 5 percent, yes or no?</p> <p>18 MR. ROBISON:</p> <p>19 Objection. Asked and answered many</p> <p>20 times, and assumes facts.</p> <p>21 A. Again, I'm presenting the FMI</p> <p>22 program, and it required --</p> <p>23 MR. AHERN:</p> <p>24 Q. No. I'm sorry, you've got to answer</p> <p>25 the question. It's yes or no. Did you tell a</p>

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<p style="text-align: right;">Page 202</p> <p>1 customer, yes or no?</p> <p>2 MR. ROBISON:</p> <p>3 Not it's asked and answered multiple</p> <p>4 times, and it still assumes facts.</p> <p>5 A. I'm sorry, Pat, I'm answering it the</p> <p>6 best I can. We had to reduce chick hatch to</p> <p>7 meet the space requirements.</p> <p>8 MR. AHERN:</p> <p>9 Q. I'm not talking about the UEP</p> <p>10 certified program. I'm talking about</p> <p>11 independent of the UEP certified program.</p> <p>12 A. Oh, okay. I'm sorry. Okay.</p> <p>13 Q. Independent of the UEP certified</p> <p>14 program, did you ever tell a customer that</p> <p>15 Cal-Maine had agreed to follow a UEP</p> <p>16 recommendation that it reduce its chick hatch by</p> <p>17 5 percent?</p> <p>18 MR. ROBISON:</p> <p>19 Same objections.</p> <p>20 A. And I wasn't familiar with a UEP</p> <p>21 chick hatch reduction independent of the FMI</p> <p>22 program.</p> <p>23 MR. AHERN:</p> <p>24 Q. So the answer is no?</p> <p>25 MR. ROBISON:</p>	<p style="text-align: right;">Page 204</p> <p>1 Same objections.</p> <p>2 MR. AHERN:</p> <p>3 Q. The answer is no, correct?</p> <p>4 A. No.</p> <p>5 MR. ROBISON:</p> <p>6 Same.</p> <p>7 MR. AHERN:</p> <p>8 Q. Now, did you ever have discussions</p> <p>9 with customers about egg exports being a reason</p> <p>10 for rising prices?</p> <p>11 A. Yes.</p> <p>12 Q. And did you ever tell a customer that</p> <p>13 there were egg exports being made by USEM?</p> <p>14 A. Yes.</p> <p>15 Q. And which customers did you tell</p> <p>16 that?</p> <p>17 A. I'm sorry, Pat, I can't tell you</p> <p>18 specifically, but that's general -- I'm talking</p> <p>19 to my customers two, three, five times a week.</p> <p>20 It's general conversation.</p> <p>21 Q. Okay. Did you tell them what the</p> <p>22 USEM was?</p> <p>23 A. I don't remember specifically which</p> <p>24 customers, but I'm sure it would have been</p> <p>25 related to USEM, yes.</p>
<p style="text-align: right;">Page 203</p> <p>1 Same.</p> <p>2 A. No, I would not have known.</p> <p>3 MR. AHERN:</p> <p>4 Q. Okay. Did you ever tell a customer,</p> <p>5 independent of the UEP certified program, that</p> <p>6 Cal-Maine had agreed to follow UEP</p> <p>7 recommendation that it molt its birds early?</p> <p>8 MR. ROBISON:</p> <p>9 Same objections.</p> <p>10 A. No.</p> <p>11 MR. AHERN:</p> <p>12 Q. Did you ever tell a customer that,</p> <p>13 independent of the UEP certified program, that</p> <p>14 Cal-Maine had agreed to slaughter birds early,</p> <p>15 which I think sometimes is euphemistically</p> <p>16 called retire them early?</p> <p>17 MR. ROBISON:</p> <p>18 Same objections.</p> <p>19 A. That wouldn't have been a discussion</p> <p>20 I would have had with a customer about telling</p> <p>21 when we're going to slaughter. We have a</p> <p>22 program we follow in Cal-Maine.</p> <p>23 MR. AHERN:</p> <p>24 Q. So the answer is no?</p> <p>25 MR. ROBISON:</p>	<p style="text-align: right;">Page 205</p> <p>1 Q. But I mean did you tell them what</p> <p>2 USEM was?</p> <p>3 A. I'm not sure that I would have told</p> <p>4 them exactly what -- I'm not sure that I know</p> <p>5 exactly what USEM is myself. I would have just</p> <p>6 talked to them in terms of United States Egg</p> <p>7 Marketers has worked with X country.</p> <p>8 Q. Okay. Did you tell them who the</p> <p>9 members of USEM were?</p> <p>10 A. No, sir.</p> <p>11 Q. Did you tell them that Cal-Maine was</p> <p>12 a member of the USEM?</p> <p>13 A. I'm sure, in general conversation,</p> <p>14 yes. I mean, I don't remember specific</p> <p>15 conversations, but, again, Pat, I'm talking to</p> <p>16 them all the time.</p> <p>17 Q. Did you tell them how -- you know,</p> <p>18 all due respect --</p> <p>19 A. Sure.</p> <p>20 Q. -- not really an answer to my</p> <p>21 question.</p> <p>22 A. Okay.</p> <p>23 Q. Did you ever tell any customer how</p> <p>24 USEM worked?</p> <p>25 A. I'm not sure that I even know that.</p>

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<p style="text-align: right;">Page 206</p> <p>1 Q. So the answer would be no.</p> <p>2 A. No. Right.</p> <p>3 Q. Did you ever tell a customer that</p> <p>4 USEM members would reimburse each other for</p> <p>5 losses sustained in connection with egg exports?</p> <p>6 MR. ROBISON:</p> <p>7 Objection. Assumes facts. No</p> <p>8 foundation.</p> <p>9 A. No. I wouldn't know have known that.</p> <p>10 MR. AHERN:</p> <p>11 Q. So the answer is no?</p> <p>12 A. No.</p> <p>13 MR. ROBISON:</p> <p>14 Same objection.</p> <p>15 MR. AHERN:</p> <p>16 Q. Let's look at Exhibit 20, please.</p> <p>17 Sorry. I have it here for you.</p> <p>18 A. Okay.</p> <p>19 Q. Let me see that one second. I'm</p> <p>20 sorry, that's not what I have it as. Never</p> <p>21 mind. I think this was just marked earlier.</p> <p>22 MR. SCHIRMER:</p> <p>23 I marked it again. It was a</p> <p>24 mistake -- I think it's the last one.</p> <p>25 MR. AHERN:</p>	<p style="text-align: right;">Page 208</p> <p>1 The Science Behind Animal Welfare Programs"?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Okay. And it is true, is it not,</p> <p>4 that the -- that one of the big selling points</p> <p>5 for the UEP certified program was that it was,</p> <p>6 according to UEP, derived from a scientific</p> <p>7 committee?</p> <p>8 MR. ROBISON:</p> <p>9 Object to form.</p> <p>10 MR. AHERN:</p> <p>11 Q. Is that correct?</p> <p>12 MR. ROBISON:</p> <p>13 Mischaracterizes. Objection.</p> <p>14 A. My understanding is that there was</p> <p>15 academia and animal rights groups and all</p> <p>16 involved in this, along with scientists.</p> <p>17 MR. AHERN:</p> <p>18 I'll move to strike as</p> <p>19 non-responsive.</p> <p>20 A. Okay.</p> <p>21 Q. My question is, a big selling point</p> <p>22 of the UEP certified program, from UEP's</p> <p>23 standpoint, was that it was scientifically</p> <p>24 derived; isn't that correct?</p> <p>25 MR. ROBISON:</p>
<p style="text-align: right;">Page 207</p> <p>1 It's the agenda. Yeah.</p> <p>2 MR. ROBISON:</p> <p>3 68.</p> <p>4 MR. AHERN:</p> <p>5 Oh, 68. I'm sorry. My notes were</p> <p>6 from yesterday. I apologize.</p> <p>7 A. Okay.</p> <p>8 Q. Mr. Hardin, you were asked some</p> <p>9 questions about this. Who was the customer that</p> <p>10 you were bringing to this?</p> <p>11 A. The one that I hosted was Mitch Hill</p> <p>12 at H.E.B., but there were several of my</p> <p>13 customers here at this.</p> <p>14 Q. All right. And I believe you</p> <p>15 testified that the purpose of this was to bring</p> <p>16 this information about the UEP certified program</p> <p>17 to the category managers, correct?</p> <p>18 A. That's my recollection is to</p> <p>19 communicate to the people at my level --</p> <p>20 Q. Okay.</p> <p>21 A. -- what the FMI program was about.</p> <p>22 Q. All right. And this was in April of</p> <p>23 2007, correct?</p> <p>24 A. That's what it says, yes.</p> <p>25 Q. Okay. You see where it says, "2 p.m.</p>	<p style="text-align: right;">Page 209</p> <p>1 Same objections. Now asked and</p> <p>2 answered, too.</p> <p>3 MR. AHERN:</p> <p>4 Q. Can you answer that yes or no?</p> <p>5 MR. ROBISON:</p> <p>6 Same.</p> <p>7 A. I really can't because I wasn't</p> <p>8 involved in it.</p> <p>9 MR. AHERN:</p> <p>10 Q. Okay.</p> <p>11 A. Okay?</p> <p>12 Q. Okay. But you did hear that it --</p> <p>13 A. Oh, sure.</p> <p>14 Q. -- was scientifically derived?</p> <p>15 A. It was a science-based animal welfare</p> <p>16 program.</p> <p>17 Q. I understand.</p> <p>18 A. All right.</p> <p>19 Q. All right. You can put that aside.</p> <p>20 Okay. Let me show you what was</p> <p>21 marked as Exhibit 64. And this is the March 25,</p> <p>22 2007, e-mail from Bob Scott to Dolph Baker,</p> <p>23 copying you, Ken Paramore and Jack Self.</p> <p>24 A. Uh-huh.</p> <p>25 Q. And it says: "Re Mike's comments:</p>

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<p style="text-align: right;">Page 210</p> <p>1 We shouldn't depend on export."</p> <p>2 And then you see that refers to</p> <p>3 Michael Bynum's comment about: "Maybe export</p> <p>4 will save the bacon again in Q4." Do you see</p> <p>5 that?</p> <p>6 A. Yes, sir.</p> <p>7 Q. Did exports save the bacon in Q4 of</p> <p>8 2006?</p> <p>9 MR. ROBISON:</p> <p>10 Objection. No foundation.</p> <p>11 A. I don't have a recollection.</p> <p>12 MR. AHERN:</p> <p>13 Q. Okay. Did exports help the company</p> <p>14 with -- achieve higher prices with respect to</p> <p>15 the sale of eggs?</p> <p>16 MR. ROBISON:</p> <p>17 Same objection.</p> <p>18 A. I don't have a recollection back that</p> <p>19 far about exports. I wasn't involved in them.</p> <p>20 MR. AHERN:</p> <p>21 Q. It says: "Daryl talked to Mike</p> <p>22 Lindsey." Do you know who Mike Lindsey is?</p> <p>23 A. Uh-huh.</p> <p>24 Q. Who is Mike Lindsey?</p> <p>25 A. He's one of my employees.</p>	<p style="text-align: right;">Page 212</p> <p>1 Do you see that as well?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So in this e-mail, Mr. Bynum, at</p> <p>4 Tampa Farms, was communicating with Bob Scott,</p> <p>5 of Cal-Maine farms, regarding projections in the</p> <p>6 number of layers in their respective companies,</p> <p>7 correct?</p> <p>8 MR. ROBISON:</p> <p>9 Objection. Foundation. Speculation.</p> <p>10 A. I don't know.</p> <p>11 MR. AHERN:</p> <p>12 Q. Well, that's what it says, right?</p> <p>13 A. That's what it appears to say, yes.</p> <p>14 MR. AHERN:</p> <p>15 Let's go off the record.</p> <p>16 VIDEOGRAPHER:</p> <p>17 We are now going off the record. The</p> <p>18 time is 2:56 p.m.</p> <p>19 (A recess was taken.)</p> <p>20 VIDEOGRAPHER:</p> <p>21 We are now going back on the record.</p> <p>22 The time is 3:02 p.m.</p> <p>23 CROSS-EXAMINATION</p> <p>24 BY MR. ALMON:</p> <p>25 Q. Good afternoon, Mr. Hardin. My name</p>
<p style="text-align: right;">Page 211</p> <p>1 Q. Okay. And Daryl is?</p> <p>2 A. One of my employees.</p> <p>3 Q. All right. Bob Scott says: "Our</p> <p>4 position: Am staying the course on Molt and</p> <p>5 Sell, in fact moving some sales up on two flocks</p> <p>6 that were not previously able to move before</p> <p>7 Easter."</p> <p>8 Does that mean that you're actually</p> <p>9 going to be able to sell two additional flocks</p> <p>10 that you weren't projected to be selling?</p> <p>11 MR. ROBISON:</p> <p>12 Objection. Foundation. Speculation.</p> <p>13 A. I'm sorry, Pat. I don't know.</p> <p>14 That's so long ago. I wouldn't have been</p> <p>15 involved in it.</p> <p>16 MR. AHERN:</p> <p>17 Q. All right. Now, so the e-mail from</p> <p>18 Mike Bynum to Bob Scott, in that, Mike Bynum</p> <p>19 says: "Thanks, Bob... I like the April-May-June</p> <p>20 projections on ending hens better than the O-N-D</p> <p>21 ones, relative to 2006 and 2005."</p> <p>22 Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And he says: "I guess there's time</p> <p>25 to fix those if market conditions indicate."</p>	<p style="text-align: right;">Page 213</p> <p>1 is James Almon. We met earlier off the record.</p> <p>2 I represent Kroger, Safeway, Albertsons, H-E-B,</p> <p>3 Hy-Vee, A&P and Unilever in this case.</p> <p>4 A. Okay.</p> <p>5 Q. And I'm going to start by asking</p> <p>6 which of these companies are accounts of yours.</p> <p>7 A. Okay.</p> <p>8 Q. So we'll take them one at a time.</p> <p>9 Is Kroger an account of yours?</p> <p>10 A. It is today.</p> <p>11 Q. It is today. And when did Kroger</p> <p>12 start being an account of yours?</p> <p>13 A. James, I can't tell you specifically,</p> <p>14 but I've known them for years. I mean, from</p> <p>15 Gary Stall to where we're at today, I've known</p> <p>16 them for a long time.</p> <p>17 Q. How about Safeway, are they an</p> <p>18 account of yours?</p> <p>19 A. Yes.</p> <p>20 Q. Albertsons?</p> <p>21 A. Yes.</p> <p>22 Q. Is H-E-B an account of yours?</p> <p>23 A. Yes.</p> <p>24 Q. Hy-Vee?</p> <p>25 A. No.</p>

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<p style="text-align: right;">Page 214</p> <p>1 Q. And have you had any contact at all 2 with Hy-Vee regarding selling eggs? 3 A. If I have, it's been a long time ago. 4 Q. You don't have any recollection of 5 that. 6 A. No, I don't. 7 Q. How about A&P, is that an account of 8 yours? 9 A. No -- well, my people, today. 10 Back in the day that we're talking 11 about, it would have been Ken Paramore's 12 account. Today, I have responsibility for what 13 goes into the metro New York area. 14 Q. Okay. What about Walgreens, is that 15 a account of yours? 16 A. Yes. 17 Q. And is Unilever an account of yours? 18 A. No. 19 Q. And you don't sell egg products, 20 correct? 21 A. No. 22 Q. Have you ever had any discussions 23 with anyone at Kroger regarding the sale of UEP 24 certified eggs? 25 A. I'm sure I have.</p>	<p style="text-align: right;">Page 216</p> <p>1 A. I don't have any reason to believe 2 that Gary would have lied to me about Kroger's 3 intent to buy FMI certified eggs. 4 MR. ALMON: 5 Q. Did you ever discuss animal welfare 6 issues with Gary Stall? 7 A. I can't truthfully say to Gary 8 specifically, but during this time frame it was 9 going on all the time. I was in a hot air 10 balloon with him, so I'm sure we talked about 11 it. 12 Q. Do you have any specific recollection 13 of discussing animal welfare issues with Gary 14 Stall? 15 A. Not specific, but we spent a lot of 16 time together so I'm sure it came up. 17 Q. Do you believe that Gary Stall ever 18 made any false statements to you about animal 19 welfare issues? 20 A. Not that I know of. 21 Q. Are you aware of anyone else at 22 Kroger who made any false statements to you 23 about animal welfare issues? 24 A. No, sir. 25 Q. Let's turn to H-E-B.</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Okay. Would Gary Stall be one of 2 those? 3 A. That would have been the one back in 4 the day that I would have been discussing it 5 with, yes. 6 Q. Can you think of anyone else at 7 Kroger with whom you would have discussed 8 selling UEP certified eggs? 9 A. Not in this time frame. 10 Q. Do you believe that Gary Stall ever 11 made any false statements to you about 12 Cal-Maine's sale of UEP certified eggs to 13 Kroger? 14 A. I don't know why Gary would, no. 15 Q. So it's your testimony that Gary 16 Stall did not make any false statements to you 17 regarding Kroger's buying UEP certified eggs 18 from Cal-Maine? 19 MR. ROBISON: 20 Object to form. 21 MR. ALMON: 22 Q. I just want to make sure I understand 23 your answer. 24 MR. ROBISON: 25 Same.</p>	<p style="text-align: right;">Page 217</p> <p>1 A. Okay. 2 Q. H-E-B is one of your accounts, yes? 3 A. Uh-huh. 4 Q. And Mitch Hill is your principal 5 contact at H-E-B? 6 A. I'm not sure about during this time 7 frame, but at some point, yes. 8 Q. Who are the main people that you've 9 dealt with at H-E-B over the year? 10 A. For this time frame, it would have 11 been Ron Osmond or Chris Hooks or Mitch Hill at 12 a category management level. I just don't know 13 the timing of it. 14 Q. And just so we're clear, when you 15 refer to "this time period," what time period 16 are you referring to? 17 A. I probably started discussing the FMI 18 program in 2000, 2001, 2002, or right in that 19 time frame is when it all started kind of coming 20 together. 21 Q. Do you believe that Ron Osmond ever 22 made any false statements to you regarding 23 H-E-B's purchase of UEP certified eggs from 24 Cal-Maine? 25 A. No.</p>

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<p style="text-align: right;">Page 218</p> <p>1 Q. Do you believe that Chris Hooks made 2 any false statements to you about H-E-B's 3 purchase of UEP certified eggs from Cal-Maine? 4 A. No. 5 Q. How about Mitch Hill, same question? 6 A. No. 7 Q. Did you discuss animal welfare issues 8 with Ron Osmond? 9 A. Again, I'm not sure when the -- what 10 the timing of it was when they all changed jobs, 11 but it was a point of contention all the time. 12 Q. Do you have any specific recollection 13 of discussing animal welfare issues with Ron 14 Osmond? 15 A. No, I don't. I mean, I talk to him 16 all the time. 17 Q. Do you believe that Ron Osmond made 18 any false statements to you -- 19 A. No. 20 Q. -- about animal welfare issues? 21 A. No. 22 Q. Did you ever discuss any animal 23 welfare issues with Chris Hooks? 24 A. Sure I did, but I -- 25 Q. Do you have any specific recollection</p>	<p style="text-align: right;">Page 220</p> <p>1 A. You know, H-E-B is a big target, and 2 it's right in my marketplace also, and I have 3 good relationships with all the H-E-B 4 executives. So it's a topic that we discuss a 5 lot. They're a target. 6 Q. And what do you mean by "they're a 7 target"? 8 A. Well, the PETA's and the Cornucopias 9 and the HSUS organizations have challenged H-E-B 10 on many occasions over the years. And so H-E-B 11 would then rely on me to give them feedback or 12 be sure they're in compliance or whatever, but 13 it's an ongoing thing. 14 It's just because I'm so close to 15 them. I talk to them all the time. 16 Q. And do you believe that Mitch Hill 17 has ever made any false statements to you about 18 animal welfare issues? 19 A. No. He rely -- he calls me regularly 20 about animal welfare issues. 21 Q. All right. Albertsons is one of your 22 accounts also, correct? 23 A. Yes, sir. 24 Q. Gary Angell is a name that we heard 25 earlier today. Is that your principal contact</p>
<p style="text-align: right;">Page 219</p> <p>1 of discussing animal welfare issues with him? 2 A. No. It was ongoing issues. 3 Q. Do you believe -- 4 COURT REPORTER: 5 Did you say no or yes? 6 A. No. Not specific. 7 MR. ALMON: 8 Sorry, I'll slow down. 9 A. I'm sorry. 10 Q. Do you believe that Mr. Hooks made 11 any false statements to you -- 12 A. No. 13 Q. -- about animal welfare issues? 14 A. No. 15 Q. Did you have any discussions with 16 Mitch Hill about animal welfare issues? 17 A. Absolutely. 18 Q. And do you have any specific 19 recollection of having -- 20 A. It still -- 21 Q. -- those discussions with Mr. Hill 22 about animal welfare issues? 23 A. I'm sorry. It goes on all the time. 24 Q. Okay. Can you tell me -- can you 25 describe those discussions?</p>	<p style="text-align: right;">Page 221</p> <p>1 at Albertsons? 2 A. He was at the time. 3 Q. And did you ever discuss Albertsons' 4 purchases of UEP certified eggs from Cal-Maine 5 with Mr. Angell? 6 A. I'm sure I did. 7 Q. Did Mr. Angell ever make any false 8 statements to you about Albertsons' purchase of 9 UEP certified eggs? 10 A. No, sir. 11 Q. Did you ever discuss animal welfare 12 issues with Mr. Angell? 13 A. I'm sure we did. 14 Q. And did Mr. Angell ever make any 15 false statements to you about animal welfare 16 issues? 17 A. No, not that I know of. 18 Q. Do you have any specific recollection 19 of the discussions that you had with Mr. Angell 20 about animal welfare issues? 21 A. Not specific, other than they were 22 requiring the FMI program all through that -- 23 you know, as all that was transitioning. 24 Q. Are you aware of anyone else at 25 Albertsons making false statements to you about</p>

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<p style="text-align: right;">Page 222</p> <p>1 Albertsons' purchase of UEP certified eggs?</p> <p>2 A. Not false statements. I've had other</p> <p>3 people, obviously, since Gary Angell come</p> <p>4 through. I'm not even sure that I can give you</p> <p>5 specific names right off the top of my head, but</p> <p>6 it's -- I mean, we talk about it today even.</p> <p>7 Q. Regardless of whether you remember</p> <p>8 the names or not, my question is focused on</p> <p>9 whether or not anyone's made any false</p> <p>10 statements to you. So I'll ask it again.</p> <p>11 A. Okay.</p> <p>12 Q. Okay. Besides Gary -- we've talked</p> <p>13 about Gary Angell.</p> <p>14 A. Okay.</p> <p>15 Q. Has anyone else at Albertsons --</p> <p>16 strike that.</p> <p>17 Do you believe that anyone else at</p> <p>18 Albertsons has made any false statements to you</p> <p>19 about Albertsons' purchase of UEP certified</p> <p>20 eggs?</p> <p>21 A. No.</p> <p>22 Q. Okay. Do you believe that anyone</p> <p>23 else at Albertsons has made false statements to</p> <p>24 you about animal welfare?</p> <p>25 A. No.</p>	<p style="text-align: right;">Page 224</p> <p>1 to you as far as you believe about --</p> <p>2 A. Not that I know of.</p> <p>3 Q. -- Safeway's purchase of UEP</p> <p>4 certified eggs?</p> <p>5 A. Not that I know of.</p> <p>6 Q. Did you discuss animal welfare with</p> <p>7 any of the five people from Safeway that you</p> <p>8 just listed?</p> <p>9 A. I'm sure I did. I'm sure I did.</p> <p>10 Q. And do you believe that any of the</p> <p>11 five people that you've listed from Safeway made</p> <p>12 false statements to you about animal welfare at</p> <p>13 any time?</p> <p>14 A. Not that I'm aware of.</p> <p>15 Q. Is Walgreens an account of yours?</p> <p>16 A. Uh-huh.</p> <p>17 Q. Do you contact Walgreens directly, or</p> <p>18 do you go through a distributor?</p> <p>19 A. I contact Walgreens directly, to</p> <p>20 answer your question, but I'm not sure that I</p> <p>21 did anything with Walgreens directly during this</p> <p>22 time frame. I'm not sure that anybody did,</p> <p>23 quite frankly.</p> <p>24 Q. So you're not aware of anyone at</p> <p>25 Walgreens making any false statements to you</p>
<p style="text-align: right;">Page 223</p> <p>1 Q. Safeway is one of your accounts, too,</p> <p>2 yes?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Who do you deal with at Safeway?</p> <p>5 A. Today?</p> <p>6 Q. Sure.</p> <p>7 A. Amy Streeter and Dave Larson.</p> <p>8 Q. Did you ever deal with Heather</p> <p>9 Thornsley?</p> <p>10 A. Uh-huh.</p> <p>11 Q. How about Mary Ella Ottinger?</p> <p>12 A. I remember the name.</p> <p>13 Q. Wendy Coe?</p> <p>14 A. I'm sorry?</p> <p>15 Q. Wendy Coe?</p> <p>16 A. Yeah.</p> <p>17 Q. You laugh. Why is that?</p> <p>18 A. That was a pretty tough negotiation</p> <p>19 with Wendy Coe.</p> <p>20 Q. Did you discuss Safeway's purchase of</p> <p>21 UEP certified eggs with any of the five people</p> <p>22 that you've just listed?</p> <p>23 A. I'm sure I did.</p> <p>24 Q. Okay. And did any of the five people</p> <p>25 that you just listed make any false statements</p>	<p style="text-align: right;">Page 225</p> <p>1 about Walgreens' purchase of UEP certified eggs;</p> <p>2 is that correct?</p> <p>3 A. Not making false statements, no.</p> <p>4 Q. And no one at Walgreens, as far as</p> <p>5 you know, made any false statements to you about</p> <p>6 animal welfare issues, correct?</p> <p>7 A. Not that I'm aware of, no.</p> <p>8 Q. A&P is an account of yours; is that</p> <p>9 right?</p> <p>10 A. It's an odd one.</p> <p>11 Q. Why is that?</p> <p>12 A. Well, we just -- we don't sell A&P</p> <p>13 anymore. I mean, it goes through a distributor</p> <p>14 called Dora, and it's just -- all we sell A&P is</p> <p>15 specialty eggs. We don't sell them any</p> <p>16 conventional eggs at all and haven't in years.</p> <p>17 Q. So do you recall ever having any</p> <p>18 discussions with anyone at A&P about animal</p> <p>19 welfare issues?</p> <p>20 A. Never would have had a need to. They</p> <p>21 didn't buy conventional eggs.</p> <p>22 Q. So no one at A&P, then, has ever made</p> <p>23 any false statements to you about animal welfare</p> <p>24 issues, correct?</p> <p>25 A. No, I never had a discussion with</p>

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<p style="text-align: right;">Page 226</p> <p>1 them about it at all.</p> <p>2 Q. You've talked some earlier about the</p> <p>3 FMI?</p> <p>4 A. Uh-huh.</p> <p>5 Q. And you're familiar with what the FMI</p> <p>6 is, correct?</p> <p>7 A. It's an association of retailers.</p> <p>8 Q. And you testified earlier that you</p> <p>9 have read some press releases --</p> <p>10 A. Uh-huh.</p> <p>11 Q. -- of the FMI?</p> <p>12 A. Back -- related to this stuff. And,</p> <p>13 of course, you see press releases from the FMI</p> <p>14 with regularity.</p> <p>15 Q. And these are FMI press releases</p> <p>16 about the UEP program and animal welfare,</p> <p>17 correct?</p> <p>18 A. I remember some stuff back -- I can't</p> <p>19 remember who was the cheerleader at FMI at the</p> <p>20 time, but there was a cheerleader for the FMI</p> <p>21 program there. I can't remember what the</p> <p>22 chairman's name was, but yes.</p> <p>23 Q. Do you believe that any of those</p> <p>24 press releases included any false statements?</p> <p>25 A. I wouldn't have any reason to think</p>	<p style="text-align: right;">Page 228</p> <p>1 Kroger document called a "Doing Our Part</p> <p>2 Sustainability Report"?</p> <p>3 A. No, sir.</p> <p>4 Q. Have you read any Albertsons press</p> <p>5 releases regarding animal welfare?</p> <p>6 A. Not that I recall.</p> <p>7 Q. Have you ever visited Safeway's</p> <p>8 website?</p> <p>9 A. Probably have.</p> <p>10 Q. Have you ever seen Safeway's animal</p> <p>11 welfare policy that's posted on its website?</p> <p>12 A. Probably haven't. Didn't have a need</p> <p>13 to.</p> <p>14 Q. Do you have any knowledge regarding</p> <p>15 what specific costs Cal-Maine incurred to</p> <p>16 implement the UEP program?</p> <p>17 A. I know what the studies said it was</p> <p>18 going to cost. I don't know Cal-Maine</p> <p>19 specifically, what it cost us to implement it,</p> <p>20 but I know what all the studies said.</p> <p>21 Q. Do you have any knowledge regarding</p> <p>22 the actual amounts of the costs that Cal-Maine</p> <p>23 would incur for participating in the UEP</p> <p>24 program?</p> <p>25 A. I don't know Cal-Maine's specific</p>
<p style="text-align: right;">Page 227</p> <p>1 that they would.</p> <p>2 Q. Have you ever visited the FMI's</p> <p>3 website?</p> <p>4 A. I'm sure I did.</p> <p>5 Q. Have you ever read any statements</p> <p>6 about animal welfare on the FMI's website?</p> <p>7 A. No, not that I can recall. Other</p> <p>8 than press releases, but not website.</p> <p>9 Q. Have you ever read any Kroger press</p> <p>10 releases discussing animal welfare?</p> <p>11 A. I don't have a formal recollection of</p> <p>12 it, no.</p> <p>13 Q. Have you seen any letters to the UEP</p> <p>14 from Kroger discussing animal welfare?</p> <p>15 A. No.</p> <p>16 Q. Did you attend Kroger's June 28,</p> <p>17 2007, shareholder meeting?</p> <p>18 A. No.</p> <p>19 Q. Did you read a transcript of Kroger's</p> <p>20 June 28, 2007, shareholder meeting?</p> <p>21 A. Not that I remember.</p> <p>22 Q. Have you read Kroger's animal welfare</p> <p>23 policy?</p> <p>24 A. Not that I'm aware of.</p> <p>25 Q. Do you have any knowledge about a</p>	<p style="text-align: right;">Page 229</p> <p>1 costs. I know what the studies that were</p> <p>2 done -- industry studies that had been done at</p> <p>3 Michigan State and by Don Bell as to what the</p> <p>4 anticipated costs were to the industry.</p> <p>5 Q. Do you have any knowledge regarding</p> <p>6 whether Cal-Maine passed on any additional costs</p> <p>7 it incurred in implementing the UEP program by</p> <p>8 charging its customers higher prices?</p> <p>9 A. I changed the basis, the basis</p> <p>10 number. I didn't have anything to do with the</p> <p>11 price, but I changed the basis number.</p> <p>12 Q. What do you mean by you changed the</p> <p>13 basis number?</p> <p>14 A. There were costs associated with</p> <p>15 implementing the FMI program. So when earlier</p> <p>16 today we were looking at the 14 and a half back</p> <p>17 or the 12 and a half back or whatever that</p> <p>18 number was, I moved that basis number to reflect</p> <p>19 the higher costs.</p> <p>20 Q. And to help Cal-Maine recoup the</p> <p>21 higher cost that it was incurring --</p> <p>22 A. Correct.</p> <p>23 Q. -- correct?</p> <p>24 A. Correct.</p> <p>25 Q. Do you have any knowledge regarding</p>

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<p style="text-align: right;">Page 230</p> <p>1 the amount of the legal fees that Cal-Maine paid</p> <p>2 its lawyers to defend the company in this</p> <p>3 lawsuit?</p> <p>4 A. Just what I've been told.</p> <p>5 Q. And what have you been told?</p> <p>6 MR. ROBISON:</p> <p>7 Don't repeat anything you've heard</p> <p>8 from a lawyer.</p> <p>9 MR. ALMON:</p> <p>10 Q. Right. I don't want to get into</p> <p>11 anything your lawyer is telling you.</p> <p>12 A. I can't say then.</p> <p>13 Q. That's fine.</p> <p>14 You're aware that Cal-Maine has been</p> <p>15 sued by more than one group of plaintiffs,</p> <p>16 correct?</p> <p>17 A. I am.</p> <p>18 Q. Have you ever seen Cal-Maine -- the</p> <p>19 legal bills that Cal-Maine receives --</p> <p>20 A. No.</p> <p>21 Q. -- from its outside counsel?</p> <p>22 A. No.</p> <p>23 Q. So you don't know if Cal-Maine's</p> <p>24 counsel sends you separate bills for their work</p> <p>25 defending each lawsuit brought by the different</p>	<p style="text-align: right;">Page 232</p> <p>1 years and had been told that we had to do it for</p> <p>2 years, and I was just completely dumbfounded</p> <p>3 when we were going to get sued about it.</p> <p>4 Q. Who was it who had been telling you</p> <p>5 to do it for years?</p> <p>6 A. The same folks that are suing us,</p> <p>7 plus some others. I mean, Walmart had told us.</p> <p>8 McDonald's had told us.</p> <p>9 And then the first recollection that</p> <p>10 I have of someone discussing was Albertsons.</p> <p>11 They were the first ones that I kind of</p> <p>12 remember -- I don't have a specific date for</p> <p>13 you, but they were the first ones that kind of</p> <p>14 started talking about the -- an animal welfare</p> <p>15 program, and then others came shortly</p> <p>16 thereafter.</p> <p>17 Q. And that conversation with</p> <p>18 Albertsons, you would place in the early 2000s?</p> <p>19 A. Yeah. '99, 2000, 2001, somewhere</p> <p>20 through there.</p> <p>21 Q. I want to go sort of grocery store</p> <p>22 chain by chain and ask you a series of</p> <p>23 questions, starting with H-E-B.</p> <p>24 A. Okay.</p> <p>25 Q. Is H-E-B a customer that you've</p>
<p style="text-align: right;">Page 231</p> <p>1 plaintiffs' groups, correct?</p> <p>2 A. No.</p> <p>3 MR. ALMON:</p> <p>4 I have no more questions. Thank you,</p> <p>5 Mr. Hardin.</p> <p>6 A. Okay. You bet.</p> <p>7 MR. ROBISON:</p> <p>8 Anyone on the phone have any</p> <p>9 questions?</p> <p>10 MS. MARKOWITZ:</p> <p>11 No questions.</p> <p>12 CROSS-EXAMINATION</p> <p>13 BY MR. ROBISON:</p> <p>14 Q. Mr. Hardin, earlier today you were</p> <p>15 asked if you had a reaction to hearing about the</p> <p>16 lawsuits that the grocery stores had filed</p> <p>17 against Cal-Maine. Do you remember that</p> <p>18 question?</p> <p>19 A. Uh-huh. I'm sorry. Yes.</p> <p>20 Q. And I think you said you were shocked</p> <p>21 when you heard that. Would you please explain</p> <p>22 why it was you were shocked?</p> <p>23 A. I was dumbfounded to learn that we</p> <p>24 had been sued about the FMI program. I mean, it</p> <p>25 was -- it had been -- we had been doing it for</p>	<p style="text-align: right;">Page 233</p> <p>1 covered for several years?</p> <p>2 A. Yes.</p> <p>3 Q. And would you please explain why it</p> <p>4 is you can't pinpoint specific date when you</p> <p>5 might have talked to somebody at H-E-B about the</p> <p>6 UEP certified program or animal welfare issues?</p> <p>7 MR. ALMON:</p> <p>8 Object to the form.</p> <p>9 MR. AHERN:</p> <p>10 Object to the form.</p> <p>11 A. I talk to these folks all the time.</p> <p>12 I mean, literally, I mean, we talk. We're</p> <p>13 friends. We're business associates. I'm with</p> <p>14 these folks eating steak, drinking beer, playing</p> <p>15 golf, raising money for charities. I mean, I'm</p> <p>16 with them all the time.</p> <p>17 And in the case of H-E-B, it's been a</p> <p>18 big issue over the years. They've called me</p> <p>19 many times worried.</p> <p>20 And I've had film. I mean, we had</p> <p>21 some film taken in our chicken houses about</p> <p>22 animal cruelty.</p> <p>23 So I've spent a lot of time with</p> <p>24 H-E-B on this issue.</p> <p>25 MR. ROBISON:</p>

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<p style="text-align: right;">Page 234</p> <p>1 Q. After those films were released, tell 2 us about those conversations you had with H-E-B. 3 A. Well, the first ones were nasty. I 4 mean, I was on my way back from Bentonville, 5 Arkansas, seeing the Walmart people. And went 6 into the Dallas airport, and my phone started 7 ringing, my cell phone. 8 And it rapidly went from there had 9 been a HSUS claim and a video put out just 10 before the 5:00 news in downtown Houston, and 11 the next thing I know we've got people 12 boycotting H-E-B stores. And it rapidly 13 escalated to where it was on the 5:00 news, and 14 they caught me going through the airport in 15 Dallas. And then 30 minutes later, I'm on the 16 phone with their public relations people, and it 17 blew up big. 18 Q. I mean, what were their questions to 19 you? 20 A. What is going on? I thought you were 21 on the FMI program. Have you got all this stuff 22 covered? What are you doing to protect us? 23 What are you doing to fix this problem tonight? 24 There's thousands of people in Houston that are 25 boycotting our stores. They won't buy your</p>	<p style="text-align: right;">Page 236</p> <p>1 but I'm talking with these folks all the time 2 about this stuff. 3 MR. ROBISON: 4 Q. All right. Now, you were asked about 5 false statements, whether somebody from H-E-B 6 had ever made a false statement to you. And I 7 want to go back to the allegations that the 8 grocery store plaintiffs have made in these 9 lawsuits since 2010. 10 A. Okay. 11 Q. All right. Now, you explained to one 12 of the other lawyers that you have read through 13 these allegations, and you understood that the 14 grocery store plaintiffs were challenging the 15 UEP certified program. Do you remember that? 16 A. Yes. 17 Q. All right. Now, think about, on the 18 one hand, the conversations with H-E-B business 19 people about animal welfare demands and the 20 certified program, and then think about the 21 attacks on that same program you read about in 22 the lawsuits. 23 Can you think of a way that both of 24 those things can be true, that H-E-B wants the 25 program and that they're calling it illegal?</p>
<p style="text-align: right;">Page 235</p> <p>1 eggs, they won't buy our eggs. I mean, it was a 2 huge blowup. 3 Q. So what did you do in response to 4 these questions from H-E-B? 5 A. Well, the first thing we did was get 6 a public relations firm involved to help us. 7 And then the next thing we did was redid all the 8 animal welfare audits immediately. And had the 9 UEP folks out to audit the facility that had 10 been targeted, and satisfied H-E-B that we were 11 following all the FMI guidelines. 12 Q. Did you lose H-E-B as a customer over 13 that video? 14 A. No. No. 15 Q. Do you have any doubt in your mind 16 that you've had multiple conversations over the 17 years with H-E-B people about the UEP certified 18 program and animal welfare issues? 19 MR. AHERN: 20 Object to the form. 21 A. I've talked to all of our customers 22 many, many, many times about the FMI -- UEP 23 program, whatever y'all want to call it. I 24 always called it F -- well, y'all keep saying 25 UEP program, but I always called it FMI program,</p>	<p style="text-align: right;">Page 237</p> <p>1 MR. AHERN: 2 Object to form. 3 MR. ALMON: 4 Object to form. 5 A. I don't understand any of the -- 6 it's, again, shocking to me. I promise you 7 fellows, it's shocking to me. I mean, this 8 whole thing -- we talk about this stuff 9 constantly. They demand -- it's on their egg 10 cartons. They drew the artwork. They provide 11 all the detail. They do the audits. 12 I got a Safeway request on my phone 13 right now to get another farm audited. I mean, 14 it literally came this morning. And -- I don't 15 know. None of it makes any sense to me. 16 MR. AHERN: 17 Move to strike as non-responsive. 18 A. Sorry. 19 MR. ROBISON: 20 Don't worry. It wasn't 21 non-responsive. 22 Q. So can you explain to a jury how the 23 H-E-B egg buyers can be demanding a program that 24 their lawyers say is illegal? 25 MR. ALMON:</p>

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<p style="text-align: right;">Page 238</p> <p>1 Object to form.</p> <p>2 MR. AHERN:</p> <p>3 Object to the form.</p> <p>4 A. No, I can't explain.</p> <p>5 MR. ROBISON:</p> <p>6 Q. All right. Now, after the lawsuits</p> <p>7 were filed in 2010, did the H-E-B egg buyers</p> <p>8 suddenly reverse course and stop demanding</p> <p>9 certified eggs?</p> <p>10 MR. AHERN:</p> <p>11 Object to form.</p> <p>12 A. I haven't had anybody from any</p> <p>13 company ask me to get out of the -- get away</p> <p>14 from the animal welfare program.</p> <p>15 MR. ROBISON:</p> <p>16 Q. Is H-E-B still asking for copies of</p> <p>17 the audit showing that Cal-Maine is UEP</p> <p>18 certified?</p> <p>19 A. I can't tell you about H-E-B</p> <p>20 specifically, when the last time they requested</p> <p>21 a copy of the audit, but we routinely send them</p> <p>22 to our customers, and we routinely get requests</p> <p>23 for last year's certification.</p> <p>24 Q. After the lawsuits started being</p> <p>25 filed in --</p>	<p style="text-align: right;">Page 240</p> <p>1 Safeway people as I was to some of the other</p> <p>2 folks because they were West Coast, and they</p> <p>3 were going through a buyer change at the time.</p> <p>4 They -- Dominick's -- they had bought</p> <p>5 a chain in Chicago called Dominick's. And I</p> <p>6 went to see the buyer, who had kind of inherited</p> <p>7 the Safeway egg program at the time, in Chicago.</p> <p>8 And I can't remember his name. But it was</p> <p>9 required.</p> <p>10 It wasn't like I was talking to him</p> <p>11 every minute about it, like some other</p> <p>12 customers, because they were in transition at</p> <p>13 the time all this was going on, but it was</p> <p>14 required.</p> <p>15 MR. ROBISON:</p> <p>16 Q. By Safeway?</p> <p>17 A. By Safeway, yes.</p> <p>18 Q. In what time frame?</p> <p>19 A. This would have been 2002, 2001 --</p> <p>20 right through there, 2003.</p> <p>21 Q. Up through today?</p> <p>22 A. Absolutely. It's in their specs.</p> <p>23 Q. Same sort of question about the</p> <p>24 Safeway lawyers' attacks on the certified</p> <p>25 program. Can you reconcile for the jury and</p>
<p style="text-align: right;">Page 239</p> <p>1 A. Oh, absolutely.</p> <p>2 Q. Okay.</p> <p>3 A. Absolutely.</p> <p>4 Q. After the lawsuits started being</p> <p>5 filed in 2010, has H-E-B continued to demand</p> <p>6 certified eggs?</p> <p>7 A. Yes. I mean, they did an artwork</p> <p>8 change since then and put it right on the egg</p> <p>9 carton again.</p> <p>10 Q. So today, if you went into an H-E-B</p> <p>11 grocery store and looked at an egg carton, it</p> <p>12 would have the UEP certified logo?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Let's shift to Safeway. You were</p> <p>15 asked similar questions about Safeway.</p> <p>16 A. Yes, sir.</p> <p>17 Q. Now, even if you can't remember a</p> <p>18 specific date or time on the calendar, is there</p> <p>19 any doubt in your mind that you have talked to</p> <p>20 Safeway representatives several times from the</p> <p>21 2002 time frame to the present about the UEP</p> <p>22 certified program and animal welfare issues?</p> <p>23 MR. ALMON:</p> <p>24 Object to form.</p> <p>25 A. Brian, I wasn't as close to the</p>	<p style="text-align: right;">Page 241</p> <p>1 explain how it can both be true that Safeway is</p> <p>2 demanding the UEP certified program outside the</p> <p>3 courtroom, and yet inside the courtroom</p> <p>4 challenges it as illegal?</p> <p>5 MR. ALMON:</p> <p>6 Object to form.</p> <p>7 A. No, sir, I can't reconcile.</p> <p>8 MR. ROBISON:</p> <p>9 Q. And did you say -- what was it you</p> <p>10 said about you had a voicemail from Safeway</p> <p>11 today on your phone?</p> <p>12 MR. ALMON:</p> <p>13 Object to form.</p> <p>14 A. I got an e-mail right now -- I'm</p> <p>15 sorry.</p> <p>16 MR. ALMON:</p> <p>17 It's okay.</p> <p>18 A. In fact, I got an e-mail now wanting</p> <p>19 to get another farm certified for potential</p> <p>20 supply to Safeway Houston.</p> <p>21 MR. ROBISON:</p> <p>22 Q. Now, who is it that Safeway wants to</p> <p>23 do the audit, according to this e-mail?</p> <p>24 A. Well, according to this e-mail, it</p> <p>25 just says, hey, we need to get this farm</p>

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<p style="text-align: right;">Page 242</p> <p>1 audited. They wanted potentially some 2 Proposition 2 eggs, and they wanted to get it 3 audited for potentially Houston, the Houston 4 distribution center. And so that meant a 5 Safeway QA audit and an animal welfare audit. 6 Q. So one of the audits would be Safeway 7 going on site to audit -- 8 A. Sure, absolutely. That came last 9 night. 10 Q. Same questions about Albertsons. 11 A. Okay. 12 Q. Even if you can't pinpoint a specific 13 date on the calendar, is there any doubt in your 14 mind you talked to Gary Stall or somebody -- 15 A. Gary Angell. 16 Q. -- sorry, Gary Angell or somebody 17 else from Albertsons in the 2002 time frame on 18 forward about the UEP certified program and 19 animal welfare -- 20 A. There was never a question -- 21 MR. ALMON: 22 Object to form. 23 A. Sorry. There was never a question 24 about whether they wanted it. I had some 25 problems at Albertsons about getting paid for</p>	<p style="text-align: right;">Page 244</p> <p>1 filed in 2010, has anybody from Albertsons asked 2 for non-certified eggs? 3 A. No. 4 Q. And same question about Albertsons' 5 egg buyers and its lawyers. Is there any way 6 you can reconcile for the jury how the egg 7 buyers' demands for certified eggs outside the 8 courtroom could be true at the same time their 9 lawyers' attacks on the certified program as 10 illegal could be true? 11 MR. ALMON: 12 Object to form. 13 A. I can't reconcile it. I don't 14 understand it. 15 VIDEOGRAPHER: 16 Eight minutes. 17 MR. ROBISON: 18 Q. Moving to Kroger, Gary Stall is one 19 of the people you said you had met with -- 20 A. Uh-huh. 21 Q. -- to discuss the certified program 22 and animal welfare issues. Even if you can't 23 pinpoint a specific date, is there any doubt in 24 your mind you and Gary Stall had conversations 25 about the UEP certified program and animal</p>
<p style="text-align: right;">Page 243</p> <p>1 it. And I had some arguments with Gary in 2 e-mail form and verbally. 3 I mean, Gary and I were pretty close. 4 I thought we were, anyway. But we were pretty 5 close. So, I mean, it was coming, and they 6 said -- but he kept arguing with me -- I 7 remember specifically Gary saying, "but I ain't 8 paying for it." And so we had some pretty 9 tenuous arguments about that. 10 MR. ROBISON: 11 Q. After the lawsuits starting getting 12 filed in 2010, did anybody from Albertsons 13 change course and stop demanding certified eggs? 14 A. Again, I haven't had one customer ask 15 me to get off the ACC/FMI/UEP program. 16 Q. And that would include Albertsons? 17 A. No. We did not. 18 Q. Is Albertsons still requiring you to 19 give copies of the audits showing that Cal-Maine 20 is UEP certified? 21 A. I can't specifically say if they've 22 asked specifically for the last audit, but the 23 last set of specs and the last business I won 24 with them, it was required. 25 Q. After the lawsuits started being</p>	<p style="text-align: right;">Page 245</p> <p>1 welfare issues? 2 MR. ALMON: 3 Object to form. 4 A. There's no question. 5 MR. ROBISON: 6 Q. Any question in your mind that Kroger 7 demanded certified eggs in the 2002, 2003 time? 8 A. No question in my mind. 9 Q. Has Kroger ever wavered in those 10 demands? 11 A. Not to my knowledge. I went through 12 a time frame where I wasn't directly responsible 13 for it, but I am today, and no one's ever 14 wavered from it to my knowledge. 15 Q. So Kroger today -- 16 A. Today requires it. 17 Q. And is Kroger another one of the 18 customers that demands compliance with the 19 certified program? 20 A. Brian, I cannot remember their spec, 21 but it's common knowledge. I just don't 22 remember it specifically in the specification, 23 but it's common knowledge that Safeway, Kroger, 24 Albertsons, Walmart, H-E-B, Publix, all of them 25 require the certified program.</p>

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<p style="text-align: right;">Page 246</p> <p>1 Q. Still to this day?</p> <p>2 A. Till this day, yes.</p> <p>3 Q. And has anybody from Kroger reversed</p> <p>4 course after 2010 and started demanding</p> <p>5 non-certified eggs?</p> <p>6 A. No.</p> <p>7 Q. And, again, can you explain to the</p> <p>8 jury how the Kroger demands for the UEP</p> <p>9 certified program can be reconciled as true if</p> <p>10 the lawyers' attacks on that same program are</p> <p>11 true?</p> <p>12 MR. ALMON:</p> <p>13 Object to form.</p> <p>14 A. No.</p> <p>15 MR. ROBISON:</p> <p>16 Q. On Walgreens, is it your</p> <p>17 understanding that Walgreens still demands that</p> <p>18 the certified -- UEP certified logo be on egg</p> <p>19 cartons that are in its stores?</p> <p>20 A. Walgreens designs their own cartons,</p> <p>21 and it's on there.</p> <p>22 Q. To this day?</p> <p>23 A. To this day.</p> <p>24 Q. Has there been any change in that</p> <p>25 design since 2010 when these lawsuits were</p>	<p style="text-align: right;">Page 248</p> <p>1 We've supplied Walgreens with eggs</p> <p>2 through McLane. Y'all had asked about McLane</p> <p>3 earlier. So through McLane, Walgreens got eggs,</p> <p>4 or through Nash Finch, Walgreens got eggs, but</p> <p>5 there never was a Nice egg.</p> <p>6 And when there finally became a Nice</p> <p>7 egg, Walgreen went out with a bid to bid the</p> <p>8 Nice egg business, and it required UEP</p> <p>9 certification.</p> <p>10 Q. Even after 2010 when the lawsuits</p> <p>11 were filed?</p> <p>12 A. I don't think any of it happened</p> <p>13 before 2010. I think all of this was post</p> <p>14 lawsuit.</p> <p>15 Q. So Walgreens comes out with the Nice</p> <p>16 label for eggs in its stores after 2010, and it</p> <p>17 required the UEP certified logo to be on those</p> <p>18 cartons?</p> <p>19 A. Yes, sir.</p> <p>20 MR. ALMON:</p> <p>21 Object to form.</p> <p>22 MR. ROBISON:</p> <p>23 Q. Has this changed at all up to</p> <p>24 today --</p> <p>25 A. No, sir.</p>
<p style="text-align: right;">Page 247</p> <p>1 filed?</p> <p>2 A. I don't know that Walgreen had their</p> <p>3 own carton during this time frame. I'm not sure</p> <p>4 that Walgreen even had an egg carton -- it's</p> <p>5 called Nice. And I'm not even sure that they</p> <p>6 came out with that until 2011 or '12.</p> <p>7 I mean, they had just bought house</p> <p>8 brand, store brand -- I mean, distributor</p> <p>9 brands, my brands. I'm not even sure that</p> <p>10 Walgreen had an egg program until '10.</p> <p>11 Q. So it's your recollection that before</p> <p>12 2010, Walgreens had other brands of eggs in its</p> <p>13 stores with the certified logo on it?</p> <p>14 MR. ALMON:</p> <p>15 Object to form.</p> <p>16 A. Yes.</p> <p>17 MR. ROBISON:</p> <p>18 Q. And then after 2010, Walgreens came</p> <p>19 out with its own brand; is that what you're</p> <p>20 saying?</p> <p>21 A. Yeah. And I'm not sure of the exact</p> <p>22 dates. I'm not sure of the exact dates. But I</p> <p>23 didn't go -- there was never a Walgreen egg</p> <p>24 program. There just never was one. They</p> <p>25 would -- to my knowledge.</p>	<p style="text-align: right;">Page 249</p> <p>1 Q. -- as you sit here?</p> <p>2 A. No, sir. We just bid it two weeks</p> <p>3 ago, and it required it. There was a bid two</p> <p>4 weeks ago on the Nice -- for the Walgreen eggs,</p> <p>5 and it went cheap.</p> <p>6 Q. Can you explain for the jury why it</p> <p>7 is that Walgreens would be demanding certified</p> <p>8 eggs and putting the UEP certified logo on its</p> <p>9 cartons at the same time its lawyers are</p> <p>10 attacking the UEP certified program as illegal?</p> <p>11 MR. ALMON:</p> <p>12 Object to form.</p> <p>13 A. No, sir. I'm sorry. No, I can't.</p> <p>14 We just bid it two weeks ago. It's</p> <p>15 still on the -- it's still on the damn website.</p> <p>16 Sorry.</p> <p>17 MR. ROBISON:</p> <p>18 Q. Explain what --</p> <p>19 A. I apologize. Makes me mad.</p> <p>20 Q. Explain what you mean. You bid what</p> <p>21 two weeks ago?</p> <p>22 A. The Walgreen egg business. All the</p> <p>23 Walgreen business nationally went out for bid.</p> <p>24 And as a part of that speculation, it required</p> <p>25 certified eggs. That was just -- it was either</p>

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<p style="text-align: right;">Page 250</p> <p>1 two weeks ago today or three weeks ago today. 2 VIDEOGRAPHER: 3 Four minutes. 4 MR. ROBISON: 5 Let's change the tape. 6 VIDEOGRAPHER: 7 This is the end of tape number three 8 in the video deposition of Jeff Hardin. We are 9 now going off the record. The time is 3:35 p.m. 10 (A recess was taken.) 11 VIDEOGRAPHER: 12 This is the beginning of tape number 13 four in the video deposition of Jeff Hardin. We 14 are now going back on the record. The time is 15 3:41 p.m. 16 MR. ROBISON: 17 Q. Mr. Hardin, I'm handing you 18 Exhibit 52 to your deposition. We marked that 19 earlier today. And what is that again? 20 A. This is one of those legal documents 21 from Albertsons. 22 Q. And what's the date on the front? 23 Dated as of 13th day of November, 2003; is that 24 right? 25 A. 2003, yes, sir.</p>	<p style="text-align: right;">Page 252</p> <p>1 with Albertsons? 2 A. Yeah. They -- obviously, they had a 3 number 4, "Pricing Terms," as an amendment 4 because this -- or as an attachment, because 5 they used this, I'm sure, with all of their egg 6 producers -- egg suppliers, so that everybody 7 probably had a sheet like this on the back. 8 Q. And that sheet set forth terms of the 9 contract? 10 A. Set forth the basis numbers, right. 11 Q. Pricing? 12 A. Set forth the pricing, the cartons, 13 and the ACC number. 14 Q. And was Cal-Maine being ACC certified 15 a requirement for Albertsons under this 16 contract? 17 A. Yes, sir. 18 Q. And has that ever changed to this 19 day -- 20 A. No, sir. 21 Q. -- for dealing with Albertsons? 22 A. No, sir. 23 Q. Now, Mr. Hardin, let's get 24 Exhibit 54. You were shown that earlier today. 25 This is a Safeway contract.</p>
<p style="text-align: right;">Page 251</p> <p>1 Q. All right. And if you look at the 2 bottom of page 1, there's a paragraph number 4, 3 "Pricing Terms"? 4 A. Yes, sir. 5 Q. And the first sentence says: "Prices 6 shall be determined as provided on Exhibit "A" 7 attached hereto and incorporated herein." 8 A. Yes, sir. 9 Q. You see that? 10 A. Yes, sir. 11 Q. Now, if you flip to Exhibit A -- you 12 see Exhibit A on there? 13 A. Yes, sir. 14 Q. The last line of Exhibit A says: 15 "Supplier's ACC #," and then somebody wrote in 16 "103." Do you see that? 17 A. Yes, sir. 18 Q. What is that? 19 A. That's Cal-Maine's ACC number. 20 Q. What's an ACC number? 21 A. That's Animal Care Certified number. 22 Q. And was that the name of the UEP -- 23 A. That was what the FMI program was 24 called back then, the ACC program. 25 Q. And this was part of the contract</p>	<p style="text-align: right;">Page 253</p> <p>1 A. Yes, sir. 2 Q. And if you go to the -- page 6. The 3 page number is kind of here in the middle of the 4 page. 5 A. Okay. 6 Q. Right above the number 6, there's a 7 Section 2.10. Do you see that? 8 A. Yes, sir. 9 Q. "Records and Audits"? 10 A. Yes, sir. 11 Q. And would you read, just to 12 yourself -- you don't have to read it out 13 loud -- just read to yourself the subparagraphs 14 under "2.10 Records and Audits," and let me know 15 when you're finished. 16 A. Okay. 17 Q. Now, what is this section "Records 18 and Audits" saying, just in your layman's terms? 19 A. It's just saying we've got to have 20 all of our audits available to them. We got to 21 retain them for three years. We've got to be 22 able to show supporting information concerning 23 an invoice. We've got to permit the Safeway 24 folks on site to conduct their own audits and 25 check our records and personal data.</p>

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<p style="text-align: right;">Page 254</p> <p>1 Q. And in your experience, have Safeway 2 people taken advantage of these provisions and 3 come on site to audit locations? 4 A. I got an e-mail last night wanting to 5 do some more. We just had some audits in the 6 last eight months or so. 7 Q. Where Safeway people physically come 8 on to -- 9 A. Safeway people physically came to our 10 Searcy operation and our Waelder operations to 11 do audits around conventional eggs, and then the 12 HFAC audits around our cage free facility and 13 our organic facility in Chase, Kansas. 14 Q. And this contract is -- flipping to 15 page 4 of the contract -- 16 A. Yes, sir. 17 Q. -- you see it's dated at the top as 18 of March 22, 2009? 19 A. Yes. 20 Q. And then -- 21 A. Is this the one where I had gave them 22 \$100,000 lump sum? 23 Q. We'll get to that in a second. Yeah. 24 Now, in future dealings with Safeway, 25 have there been similar audit provisions</p>	<p style="text-align: right;">Page 256</p> <p>1 Q. And during that time, did any Safeway 2 representative ever say that Safeway wanted to 3 shift and start buying non-certified eggs? 4 A. No, sir. 5 Q. Did anyone from Safeway ever say it 6 no longer wanted Cal-Maine to be in compliance 7 with the UEP certified program? 8 A. Said that they did not want us to be? 9 No. Quite to the contrary, they -- a couple of 10 years ago, they made us go to this Humane Farm 11 Animal Care on the audits page here. What page 12 is this, 6? 13 So page 7, for our cage free and 14 organic, that's the most stringent standard in 15 the industry. 16 Q. And you're talking about HFAC on page 17 7? 18 A. Humane Farm Animal Care, right. 19 And this lady that runs this 20 certification body actually sat on the FMI 21 scientific advisory committee. And so she 22 developed her own program outside the scientific 23 committee, and Safeway requires compliance with 24 that program. 25 Q. So for table eggs, Safeway requires</p>
<p style="text-align: right;">Page 255</p> <p>1 allowing Safeway employees to come on site and 2 audit a Cal-Maine location? 3 A. In future ones? 4 Q. Yeah, after this 2009 agreement. 5 A. I just wrapped up negotiations with 6 Safeway this week. 7 Q. All right. Tell the jury about your 8 Safeway negotiations this week. What are you 9 talking about? 10 A. Well, they had put their egg business 11 out for bid. So we have been working on it, I 12 don't know how long now, but probably starting 13 in early February. 14 Q. Of what year? 15 A. Of this year. Up until Tuesday, we 16 got notification that we had retained the 17 conventional business under UEP guidelines. We 18 had retained it. It cost me about a cent and a 19 half or two cents a dozen to keep it, but we 20 just got notice this week. 21 Q. So February of 2014 up through 22 mid-April -- 23 A. I can't remember -- 24 Q. -- of 2014 -- 25 A. We've been negotiating it.</p>	<p style="text-align: right;">Page 257</p> <p>1 Cal-Maine to follow the UEP certified program? 2 A. Yes. 3 Q. And for cage free eggs, Safeway 4 requires the -- 5 A. HFAC. 6 Q. -- Cal-Maine to require HFAC 7 guidelines? 8 A. Right. 9 Q. To this day? 10 A. To this day, yes, sir. 11 Q. Now, let's shift to Exhibit B on this 12 same Safeway contract. 13 A. D.? 14 Q. B., as in boy. Page 22. 15 A. Okay. 16 Q. And this is still part of this 17 Safeway contract. You see a paragraph for 18 "Quality Requirements"? The first paragraph? 19 The next page. Page 22, Exhibit B. 20 A. Yes, sir. 21 Q. I'm just going to read that into the 22 record. "Quality Requirements: USDA Inspector 23 to be on-site at Cal-Maine Food, Inc. 24 facilities. USDA presence at facility at a 25 minimum of two to three days per week. Weekly</p>

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<p style="text-align: right;">Page 258</p> <p>1 USDA inspection is mandatory on all eggs. Must 2 comply with UEP's Animal Husbandry Guidelines. 3 Suppliers must be Humane Farm Animal Care 4 certified for cage free eggs within six months 5 of business award." 6 Did I read that right? 7 A. Yes. 8 Q. And that was a requirement under this 9 2009 contract with Safeway? 10 A. Well, it was clear. Everything was 11 in the open on this whole thing. I didn't want 12 to do the HFAC program. It was a pain in the 13 neck. And the reason they gave us six months is 14 because I was pushing back on the thing. But 15 they said, okay, we'll give you six more months, 16 but you got to get it. And so we did. 17 But they required -- you know, I've 18 been talking to these people for years. There 19 ain't no secrets about any of this stuff. They 20 required all of it, and to the Nth degree. 21 Q. And still to this day require both? 22 A. Still to this day, yes. 23 Q. Now, next down is "Emergency 24 Requirements." Do you see that? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 260</p> <p>1 constantly ask for it, just to update their -- 2 keep their files up to date. 3 Q. Now, I want to ask about -- we can 4 put these contracts away for now. 5 I want to ask about an incident 6 involving another egg producer. You've heard of 7 Sparboe Farms? 8 A. Yes, sir. 9 Q. Do you remember an incident in late 10 2012 involving Sparboe Farms and one of these 11 undercover videos? 12 A. Yes, sir. 13 Q. Would you explain to the jury what 14 you remember happened? 15 A. Well, I don't remember the specific 16 incident at the moment it happened, but I 17 remember my phone ringing. 18 Sparboe had had an animal welfare 19 cruel -- or animal cruelty tape, similar to what 20 happened to Cal-Maine, that hit the wire. And 21 it was -- as I recall it -- I'm doing all this 22 from memory, but as I recall it, that was on a 23 Friday afternoon, about the same time that it 24 hit Cal-Maine on a Friday afternoon, at, like, 25 5:00, okay? So it hit the news.</p>
<p style="text-align: right;">Page 259</p> <p>1 Q. That says: "Safeway must approve 2 Cal-Maine's Disaster Preparedness Plan." Do you 3 see that? 4 A. Yes, sir. 5 Q. Have you provided a Disaster 6 Preparedness Plan to Safeway? 7 A. You know, I'm -- Brian, I can't 8 remember specifically, but we provide Safeway 9 and a bunch of customers all this kind of stuff 10 all the time. We're one of -- I say one of the 11 few, I can't say that. We have got an emergency 12 preparedness plan in case of hurricanes, in case 13 of tornadoes, depending on what part of the 14 country -- you know, obviously, you don't have a 15 hurricane prevention plan in Kansas. 16 But you've got tornado, you've got 17 fire, you've got hurricane. You've got a crisis 18 management team in place to help ourselves and 19 our customers deal with emergency situations, 20 from public relations all the way to the place 21 burning to the ground, so -- and all of that's 22 required these days. 23 Q. And you're willing to share that with 24 the customer? 25 A. Well, they get it all the time. They</p>	<p style="text-align: right;">Page 261</p> <p>1 I don't remember it because I was 2 already at my house. But my phone rang, and it 3 was a phone number I didn't recognize. And I 4 answered the phone on my -- answered my cell 5 phone, and it was a guy named Joerg something. 6 I can't remember Joerg's last name, Steinbach or 7 something, with Target Corporation. And he was 8 asking me how quickly I could get eggs to him. 9 And that was the Friday afternoon 10 before -- before -- as I recall it, it was the 11 Friday before Thanksgiving Thursday. 12 Q. So why was this person from Target 13 calling you? 14 A. He was -- 15 MR. AHERN: 16 Object to the form. 17 A. He was calling me because he needed 18 eggs. He was getting rid of Sparboe, is what he 19 told me. 20 He told me that Sparboe had had an 21 animal cruelty incident, and it appeared that he 22 needed to get out of that relationship. And he 23 needed to see if Cal-Maine could cover him with 24 eggs quickly. 25 MR. ROBISON:</p>

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<p style="text-align: right;">Page 262</p> <p>1 Q. And what was your answer?</p> <p>2 A. I told him that I would go to work on</p> <p>3 it and -- so he and I had phone numbers over the</p> <p>4 weekend. I told him -- I asked him for some</p> <p>5 phone numbers where I could coordinate purchase</p> <p>6 orders if I were able to come up with eggs.</p> <p>7 You got to remember that this was</p> <p>8 literally less -- as I recall it, less than a</p> <p>9 week before Thanksgiving. There are no eggs. I</p> <p>10 mean, we've got a rising egg market. We've got</p> <p>11 demand going through the roof because it's</p> <p>12 Thanksgiving. And they need eggs, and it's</p> <p>13 going to be very difficult to lay my hands on</p> <p>14 it.</p> <p>15 So I had asked him for some phone</p> <p>16 numbers, which he supplied, of folks that I</p> <p>17 could get ahold of and get purchase orders, if I</p> <p>18 were able to come up with some eggs for him.</p> <p>19 Q. And were you able to get some eggs?</p> <p>20 A. Brian, we got him eggs. I can't</p> <p>21 remember how many -- it was something on the</p> <p>22 order of 20 or 25 loads of eggs by Tuesday of</p> <p>23 the next week, to help him get through the</p> <p>24 Thanksgiving push. And then we became an</p> <p>25 ongoing supplier to him for the next year and a</p>	<p style="text-align: right;">Page 264</p> <p>1 parking lot in -- not Cameron -- yeah, it was --</p> <p>2 Cameron, Texas, and got on a conference call</p> <p>3 with Target.</p> <p>4 And Jessica and Allen and I felt like</p> <p>5 we were going to retain the business, and we</p> <p>6 lost it. They said, "We regret to inform you</p> <p>7 that we've just chose to go with another egg</p> <p>8 producer."</p> <p>9 And we literally had a plant that you</p> <p>10 could run a conveyor belt to from their</p> <p>11 distribution center in Florida. And I could not</p> <p>12 believe we would lose it, but I had bid that</p> <p>13 business at a ridiculously cheap number, but I</p> <p>14 wanted to retain that -- particularly that</p> <p>15 Florida business.</p> <p>16 And then there was a distribution</p> <p>17 center in Fort Worth. And we got 9 million</p> <p>18 chickens within 300 miles of Fort Worth. There</p> <p>19 was no question I was going to keep that</p> <p>20 business. And we lost all of it, to price, they</p> <p>21 said.</p> <p>22 And that's what Joerg said. Matter</p> <p>23 of fact, Joerg called me. And I admired him for</p> <p>24 it. He said, "Jeff" -- after it was all said</p> <p>25 and done, he called me and said, "Jeff, I tried,</p>
<p style="text-align: right;">Page 263</p> <p>1 half or so.</p> <p>2 Q. All right. What happened after the</p> <p>3 next year and a half or so? You had been</p> <p>4 supplying Target, but then what happened?</p> <p>5 A. They put it out for bid, and I lost</p> <p>6 the business. Somebody cut my price.</p> <p>7 Q. Who?</p> <p>8 A. Rose Acre Farms. Rose Acre egg</p> <p>9 farms.</p> <p>10 Q. They undercut your price and won?</p> <p>11 A. Oh, I'm sure. I mean, we had -- I</p> <p>12 won't ever forget it. We were coming back from</p> <p>13 a meeting in -- I was somewhere in east Texas,</p> <p>14 myself and Jessica Quinn. And then our director</p> <p>15 of marketing, Allen Andrews, was on a landline.</p> <p>16 And Target had put the business out</p> <p>17 for bid, and we had been going back and forth</p> <p>18 and back and forth on pricing, and them telling</p> <p>19 me that, you're going to lose it, you're going</p> <p>20 to lose it if you don't come down further. So I</p> <p>21 kept adjusting that basis number to try to hold</p> <p>22 onto it.</p> <p>23 And then the communication shut down.</p> <p>24 They said, okay, we'll make the decision.</p> <p>25 So I pulled over into a Brookshire</p>	<p style="text-align: right;">Page 265</p> <p>1 but you were just too high. You just got" --</p> <p>2 "it was too much difference."</p> <p>3 Q. Now, you said earlier you had read</p> <p>4 the lawsuit that the grocery stores had filed</p> <p>5 against Cal-Maine?</p> <p>6 A. Uh-huh.</p> <p>7 Q. And did you see Rose Acre as one of</p> <p>8 the other defendants?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Now, the plaintiffs say Rose Acre,</p> <p>11 Cal-Maine and others have been involved in a</p> <p>12 conspiracy since about '99 or 2000 to cut supply</p> <p>13 and raise price.</p> <p>14 A. Right.</p> <p>15 Q. You remember seeing that?</p> <p>16 A. Yes, sir.</p> <p>17 MR. ALMON:</p> <p>18 Object to form.</p> <p>19 MR. ROBISON:</p> <p>20 Q. Now, does it make any sense to you</p> <p>21 that if Rose Acre and Cal-Maine are in a</p> <p>22 conspiracy to increase price, that Rose Acre</p> <p>23 would be undercutting you on price?</p> <p>24 MR. ALMON:</p> <p>25 Object to form.</p>

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<p style="text-align: right;">Page 266</p> <p>1 MR. AHERN: 2 Object to form. 3 MR. ROBISON: 4 Q. Does that make any sense? 5 MR. ALMON: 6 Same objection. 7 MR. AHERN: 8 Same objection. 9 A. Rose Acre is my biggest -- one of my 10 biggest competitors. They have taken business 11 from me at every corner. They've taken Kroger 12 business from me. They've taken ALDI business 13 in Dallas. 14 I mean, I'm so much closer to Dallas 15 than Rose Acre is. I should be able to beat 16 them every time, just from a freight 17 perspective. I never won any of ALDI's business 18 out in this part of the world. 19 They took U. S. Food Service from me 20 along the eastern seaboard. They took all my 21 U. S. Food Service business away from me in 22 Florida, every bit of it. Lost every bit of it 23 to Rose Acre. 24 I lost Winn-Dixie in Jacksonville, 25 Florida, to Weaver Brothers. Weaver Brothers is</p>	<p style="text-align: right;">Page 268</p> <p>1 don't mean -- I'm turning to speak to y'all, 2 okay? 3 But, guys, y'all got to understand, 4 this thing is a fast moving target. There ain't 5 but four days worth of inventory of eggs at any 6 one time in the country, hardly. So this thing 7 is moving fast. And when things get cheap and 8 somebody needs business, they cut your price, 9 and they come after you, and you better be on 10 your toes. It moves that quick. I'm sorry. 11 MR. ROBISON: 12 Q. And has that been true, these 13 competitor conditions you're describing, has 14 that been true from -- 15 A. 1982 through today? 16 MR. ALMON: 17 Object to form. 18 MR. AHERN: 19 Object to form. 20 MR. ROBISON: 21 Q. 1982 through today? 22 A. Well, that's when I started. 23 Q. All right. Mr. Hardin, I'm handing 24 you what I've just marked as Exhibit 70 to your 25 deposition.</p>
<p style="text-align: right;">Page 267</p> <p>1 in Versailles, Ohio. There's no way they can 2 sell eggs as cheap as I can in Florida. I got 3 them beat by 9 cents on freight. They still 4 took it away from me. 5 Everything's out in the open on all 6 of this stuff. I mean, I've lost lots of 7 business to Rose Acre, to Weaver, to Sparboe. I 8 lose business -- I lost all my U.S. Food Service 9 business in Texas to Sparboe. To this day, I 10 still don't have it. 11 So they've all cut my price and took 12 my business away from me. There ain't no 13 conspiracy. 14 MR. ROBISON: 15 Q. So what would you tell the jury about 16 the plaintiffs' conspiracy theory -- 17 A. Well, they're crazy. 18 MR. ALMON: 19 Object to the form. 20 MR. AHERN: 21 Object to the form. 22 A. I'm sorry. It's crazy. These -- 23 fellows, these guys cut my price all the damn 24 time. This is not -- they're on me, okay? I 25 mean, I get called on the carpet -- I'm sorry, I</p>	<p style="text-align: right;">Page 269</p> <p>1 (Exhibit 70 marked.) 2 Q. And this document is marked "Highly 3 Confidential," but that's hard to see on these 4 copies. 5 MR. ROBISON: 6 For people on the phone, the Bates 7 number is CM00725386-400. 8 Q. And, Mr. Hardin, I want to ask you 9 about -- well, the page numbers, for some 10 reason, didn't print. Can you find a page that 11 has 754 in parentheses up at the top. 12 A. Okay. 13 Q. And then a paragraph near the bottom 14 starting "Mr. Adams"? 15 A. Okay. 16 Q. Then next paragraph down starts with 17 a Michigan State reference. 18 A. Okay. 19 Q. See that? 20 A. Uh-huh. 21 Q. I'm just going to start there. 22 "Dr. Allan Rahn," R-a-h-n, "from Michigan State 23 University put together a report stating that 24 over the next three to five years, a company 25 starting its animal welfare program with 48</p>

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<p style="text-align: right;">Page 270</p> <p>1 inches of cage space per bird, will have a 3 to 2 5 cents per dozen loss of efficiency, labor, 3 etc. Cal-Maine is making a strong effort to 4 cover that expense by price adjustments as it 5 implements its program. 6 "Mr. Baker told the directors that 7 Cal-Maine has begun approaching its customers to 8 cover this increased cost. He was complimentary 9 of Jeff Hardin and Ken Paramore's efforts in 10 this regard. Messrs. Hardin and Paramore 11 requested and received approval to increase the 12 formulas one to two cents on 70 percent of 13 Cal-Maine's customers. They negotiated with 14 Walmart for a two cents per dozen increase, at 15 80,000 cases per week. They've also negotiated 16 an increase for most of the Company's other 17 major customers, including Food Lion, Fiesta, 18 Associated Grocers and Winn-Dixie. Mr. Baker 19 told the directors that Kroger agreed to a one 20 cent increase. Customers understand the 21 increased production cost in increasing space 22 per bird and are willing to pay the increase to 23 help appease the animal welfare people." 24 Do you see that? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 272</p> <p>1 Q. And tell the jury what sort of 2 written materials you would hand out. 3 A. There was a four-color brochure-type 4 thing describing the animal husbandry 5 guidelines. So I would take that, along with a 6 Michigan State study that Mr. Adams was 7 referring to in these minutes. 8 And then, if I felt like the customer 9 could comprehend it, although Don Bell got 10 pretty complex with some of his stuff, but there 11 was an economist at U. C. Berkeley, as I recall 12 it, named Don Bell, and I would use some of his 13 materials, too, to carry and explain to our 14 customers what was going on and what was 15 happening, at my level. 16 You know, everybody above knew what 17 was going on. It was the folks that I was 18 dealing with that we were having to educate. 19 Q. All right. I am marking as 20 Exhibits 71 and 72 some things I'd like you to 21 look at. And just tell me when you're finished 22 looking at those two documents. 23 (Exhibit 71 and Exhibit 72 marked.) 24 A. Do I need to go through them? 25 Q. Yeah. Just, you know, quickly, I</p>
<p style="text-align: right;">Page 271</p> <p>1 Q. Now, these are minutes of a Cal-Maine 2 directors meeting on March 28, 2003. 3 A. Yes, sir. 4 MR. ALMON: 5 Object to form. 6 MR. ROBISON: 7 Q. The paragraphs that I just read 8 talking about the roll-out of the program and 9 talking to customers -- 10 A. Uh-huh. 11 Q. -- is this generally the time frame 12 when you and Mr. Paramore were starting those 13 conversations? 14 MR. ALMON: 15 Object to form. 16 MR. AHERN: 17 Object to form. 18 A. As I recall it, yes. 19 MR. ROBISON: 20 Q. And when you went to your customers 21 and talked to them about this program, I think 22 you said earlier today that you had -- you would 23 take written materials with you; is that right? 24 A. Yes. I mean, it was a presentation 25 of the FMI program that I would carry with me.</p>	<p style="text-align: right;">Page 273</p> <p>1 guess, browse through them. 2 A. I mean, I'm familiar with them. 3 MS. MARKOWITZ: 4 Is there a Bates label for these? 5 MR. ROBISON: 6 Yeah, but it's cut off. It's copies 7 of the UEP guidelines. 8 MR. ALMON: 9 Brian, is the 2002 edition 71 or 72? 10 A. 2003 is 72. 2002 is 71. 11 MR. ALMON: 12 Thank you. 13 MR. ROBISON: 14 Hold on. Let's go off the record for 15 a second because I'm missing all of the marked 16 exhibits from earlier days. 17 VIDEOGRAPHER: 18 We're now going off the record. The 19 time is 4:05 p.m. 20 (Off the record.) 21 VIDEOGRAPHER: 22 We are now going back on the record. 23 The time is 4:06 p.m. 24 MR. ROBISON: 25 Q. All right. Mr. Hardin, would you</p>

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<p style="text-align: right;">Page 274</p> <p>1 look at Exhibit 71, please?</p> <p>2 A. Yes, sir.</p> <p>3 Q. Tell the jury what that is.</p> <p>4 A. This is a -- they call it UEP --</p> <p>5 United Egg Producers Animal Husbandry Guidelines</p> <p>6 for U.S. Laying Flocks, 2002 edition.</p> <p>7 So this was -- I don't remember what</p> <p>8 version there was, but every year they would</p> <p>9 update it. And this is the 2002 version.</p> <p>10 Q. So if you met with a client -- sorry.</p> <p>11 If you met with a customer when the 2002 version</p> <p>12 of the guidelines we see in Exhibit 71 was in</p> <p>13 effect, would you hand that version of the</p> <p>14 guidelines to the customer?</p> <p>15 MR. AHERN:</p> <p>16 Object to the form.</p> <p>17 A. Like I said, there were updates</p> <p>18 and -- there were updates and changes to it.</p> <p>19 Maybe. Maybe. Maybe not. But generally, some</p> <p>20 kind of change that would warrant them putting</p> <p>21 out a new edition, then I would take that and</p> <p>22 update my customers as to where we're at.</p> <p>23 MR. ROBISON:</p> <p>24 Q. So would it have been your practice</p> <p>25 to give your customer whatever was the current</p>	<p style="text-align: right;">Page 276</p> <p>1 guidelines that you would hand out at a customer</p> <p>2 meeting?</p> <p>3 MR. AHERN:</p> <p>4 Object to form.</p> <p>5 A. If I was on my toes, yes. I mean,</p> <p>6 could I foul up and not -- yeah, sure, I mean, I</p> <p>7 could foul up, but that would have been my</p> <p>8 intent, would have been to go and give them an</p> <p>9 update, particularly if they were asking for an</p> <p>10 update. Sometimes they didn't ask for updates,</p> <p>11 but, you know, generally speaking, this was a</p> <p>12 topic all the time.</p> <p>13 MR. ROBISON:</p> <p>14 Q. When you went to these customer</p> <p>15 meetings and you were handing out written</p> <p>16 materials, what was your goal in making this</p> <p>17 presentation?</p> <p>18 MR. AHERN:</p> <p>19 Object to the form.</p> <p>20 A. I typically didn't have a goal. It</p> <p>21 was them that was asking -- again, Brian, this</p> <p>22 stuff was going on all the time. This is not</p> <p>23 something where I had an objective to go sell</p> <p>24 them a program. They were asking for updates to</p> <p>25 where are we at, are we doing well, where is</p>
<p style="text-align: right;">Page 275</p> <p>1 edition of the guidelines?</p> <p>2 A. Oh, they would just come in the mail</p> <p>3 to me. I'd get a stack of, you know, 30 or 40</p> <p>4 of these.</p> <p>5 Q. And then --</p> <p>6 A. And then I'd throw the old ones away,</p> <p>7 put these in the file. And when I got a chance</p> <p>8 or when somebody asked, I'd go see them, or I'd</p> <p>9 send it to them or whatever.</p> <p>10 Q. All right. And then -- so whatever</p> <p>11 was the current version of these guidelines</p> <p>12 would be the ones you would use at your customer</p> <p>13 meetings?</p> <p>14 A. Sure. Oh, yeah. Yeah.</p> <p>15 Q. All right. Would you look at</p> <p>16 Exhibit 72, please, and tell the jury what</p> <p>17 Exhibit 72 is.</p> <p>18 A. It says this is a -- it looks like a</p> <p>19 little change to it. Yeah. 2003 edition, but</p> <p>20 it's also got the ACC checkmark on it.</p> <p>21 Q. Now, if you would go to -- scratch</p> <p>22 that.</p> <p>23 So if you were meeting with a</p> <p>24 customer when Exhibit 72 was the current version</p> <p>25 of the guidelines, would this have been the</p>	<p style="text-align: right;">Page 277</p> <p>1 your latest audit; hey, these guys from PETA,</p> <p>2 our position is going to be that we offer</p> <p>3 conventional, we offer organic, we offer cage</p> <p>4 free, you're up to speed, you know what's going</p> <p>5 on, we're good on our guidelines, right?</p> <p>6 And I'd say, yes, sir. And do you</p> <p>7 want me to send you the latest version? And</p> <p>8 they'd say, yeah. I mean, this is constant</p> <p>9 communication about all this stuff.</p> <p>10 MR. ROBISON:</p> <p>11 Q. Let's look at page 14 of Exhibit 72.</p> <p>12 And this is the 2003 edition of the UEP Animal</p> <p>13 Welfare Guidelines.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see subparagraph number 1?</p> <p>16 A. Yes, sir.</p> <p>17 Q. All right. The lead-in sentence</p> <p>18 says: "UEP's Board of Directors has established</p> <p>19 the additional requirements and benefits for</p> <p>20 companies that have filed applications to be</p> <p>21 recognized as an Animal Care Certified company."</p> <p>22 You see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. And then subparagraph 1: "A</p> <p>25 Certified company must implement the Animal</p>

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<p style="text-align: right;">Page 278</p> <p>1 Husbandry Guidelines on 100 percent of the 2 company's production facilities regardless of 3 where or how eggs may be marketed. This 100 4 percent commitment is intended to be inclusive 5 of all company entities, affiliates, etc." 6 Do you see that? 7 A. Yes, sir. 8 Q. Do you remember discussing this 9 100 percent requirement with customers in the 10 2003 time frame? 11 MR. AHERN: 12 Object to form. 13 A. Yes. I don't know specific customers 14 that it was discussed with, but it was discussed 15 with everybody. I mean, it was -- matter of 16 fact, this particular piece of it was crucial to 17 them protecting their banner. 18 You know, all of my -- y'all saw my 19 customer list. It's not the little guys. You 20 know, my customer list is Walmart, it's Safeway, 21 it's Winn-Dixie, it's Kroger. And, you know, 22 you couldn't have -- this was not an egg 23 marketing program, it was an animal welfare 24 program. 25 And so you couldn't, in my view and</p>	<p style="text-align: right;">Page 280</p> <p>1 multiple hearsay, and speculation. 2 MR. ROBISON: 3 Q. Did any customer in the 2003 time 4 frame object to this 100 percent requirement 5 when you explained it to them? 6 MR. AHERN: 7 Object to the form. 8 A. I don't recall anybody ever objecting 9 to any parts of it. 10 MR. ROBISON: 11 Q. How about after 2010? 12 MR. AHERN: 13 Same objection. 14 A. Nobody has given me any feedback of 15 any sort to strike out a portion of it or get 16 off of it or -- not one customer. 17 MR. ROBISON: 18 Q. Now, let me show you Exhibit 33. I 19 think you identified that as the Michigan State 20 study? 21 A. Yes, sir. 22 Q. And is that another one of the 23 written materials that you would hand to 24 customers during these meetings? 25 A. This would have been the primary</p>
<p style="text-align: right;">Page 279</p> <p>1 in their -- and in my view telling them about 2 all this stuff, Cal-Maine couldn't have a 3 chicken house in Edwards, Mississippi, that 4 complied and supplied them eggs, and chicken 5 houses in Robertsedale, Alabama, that didn't. It 6 was a threat to them, you know. You've got to 7 have all your chickens on it, or HSUS will come 8 after you. They'll come after me at 9 Robertsedale. 10 And all they want to do is tell the 11 press, hey, Cal-Maine, your egg supplier is not 12 UEP certified, not compliant. They don't treat 13 all their hens the same way. They treat the 14 ones that supply you a particular way, but the 15 ones down there they treat differently. 16 And, Kroger or Safeway, you've got 17 all the power, why don't you make them comply 18 with all of it. 19 So it was a threat to their banner, 20 to their storefront. So I told customer after 21 customer after customer that it was important 22 that 100 percent of the chickens be on it, or 23 they were still vulnerable to the attacks. 24 MR. AHERN: 25 Move to strike as non-responsive,</p>	<p style="text-align: right;">Page 281</p> <p>1 piece that I would have used. It would have 2 gone inside this folder, and, you know, that 3 would have been the primary piece I used. 4 Again, the Don Bell stuff was pretty 5 technical, but the Michigan State study did a 6 pretty good job, I felt like, of explaining the 7 cost. 8 My objective was to explain the 9 program and get my price increases that I needed 10 to cover the cost of the program, and this study 11 did a pretty good job of it. 12 Q. All right. I'm going to hand you 13 Exhibit 73. Mr. Hardin, what is Exhibit 73? Do 14 you recognize this? 15 A. I vaguely remember it. I mean, I -- 16 but it's the -- it's the introduction, as I 17 recall it, of the FMI/NCCR program. 18 (Exhibit 73 marked.) 19 Q. And is this another packet of written 20 materials you would have handed to customers 21 during these meetings? 22 MR. AHERN: 23 Object to form. 24 A. Where's the folder? I thought I saw 25 the folder earlier. But, I mean, it would have</p>

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<p style="text-align: right;">Page 282</p> <p>1 all gone together like that.</p> <p>2 MR. ROBISON:</p> <p>3 Q. And for the record, what exhibits are</p> <p>4 you putting together like that?</p> <p>5 A. Well, I mean, this was a folder.</p> <p>6 This was a bound folder.</p> <p>7 Q. Exhibit 72?</p> <p>8 A. 72. And then 73. And then whatever</p> <p>9 this one -- the Michigan State -- 33.</p> <p>10 Typically. Now, I'm not saying -- I don't know</p> <p>11 that I did it in every case, but typically -- I</p> <p>12 mean, I'm going in there to try to get a price</p> <p>13 increase to cover my cost. And so I would have</p> <p>14 armed myself with as much information as I could</p> <p>15 and laid it all out there because I'm asking</p> <p>16 them to pay me more money. So all of this stuff</p> <p>17 would have gone with me.</p> <p>18 Q. Actually, let's go to Exhibit 33</p> <p>19 briefly. And go to the conclusion paragraph.</p> <p>20 A. Yes, sir.</p> <p>21 Q. I want to direct your attention to a</p> <p>22 sentence that one of the other lawyers had read</p> <p>23 to you. It's here in the middle, starting with</p> <p>24 "this indicates." You see that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 284</p> <p>1 demanded that we -- or FMI and our customers</p> <p>2 demanded that we accelerate the program from the</p> <p>3 way it was originally laid out. And so we were</p> <p>4 looking for ways to get new construction under</p> <p>5 way because we knew that, you know, it's six</p> <p>6 years or seven years -- or whatever the time</p> <p>7 frame was that they had accelerated it to, we</p> <p>8 were trying to build chicken houses.</p> <p>9 (Exhibit 74 marked.)</p> <p>10 MR. ROBISON:</p> <p>11 Q. I'm going to show you Exhibit 74.</p> <p>12 MR. ROBISON:</p> <p>13 And for people on the phone, I do</p> <p>14 have a Bates number this time. It's</p> <p>15 CM00450697-99.</p> <p>16 Q. And while I'm handing this out, just</p> <p>17 take a minute to read that.</p> <p>18 A. Okay.</p> <p>19 Q. Who is Bill Remiker, or who was he in</p> <p>20 2003?</p> <p>21 A. Bill was the category manager at</p> <p>22 SUPERVALU responsible for the distribution</p> <p>23 centers that we supplied back then, which was</p> <p>24 only Indianola, as I recall it.</p> <p>25 Q. And is he somebody you would talk to</p>
<p style="text-align: right;">Page 283</p> <p>1 Q. "This indicates that, in the short</p> <p>2 run -- i.e., before additional cage space could</p> <p>3 be constructed and a supply response realized --</p> <p>4 egg prices could increase 8 to 12 percent for</p> <p>5 every 1 percent egg supplies are reduced."</p> <p>6 Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. I want to focus on the language here</p> <p>9 in the middle, "before additional cage space</p> <p>10 could be constructed"; do you see that?</p> <p>11 A. Yes, sir.</p> <p>12 Q. In your conversations with Fred</p> <p>13 Adams, Dolph Baker, Steve Storm, anybody at</p> <p>14 Cal-Maine, did you ever hear anybody say that</p> <p>15 as -- in conjunction with the UEP certified</p> <p>16 program, there would be no new cage facilities</p> <p>17 constructed?</p> <p>18 MR. AHERN:</p> <p>19 Object to form.</p> <p>20 MR. ALMON:</p> <p>21 Object to form.</p> <p>22 A. No, sir. No, quite the opposite. I</p> <p>23 mean, I think -- we had a big customer base, and</p> <p>24 this was going to have an impact.</p> <p>25 What happened was that our customers</p>	<p style="text-align: right;">Page 285</p> <p>1 directly --</p> <p>2 A. Yes.</p> <p>3 Q. -- at SUPERVALU?</p> <p>4 A. Uh-huh.</p> <p>5 Q. And do you see on the last page of</p> <p>6 this exhibit that you are copied on it?</p> <p>7 A. Yes.</p> <p>8 Q. All right. I just want to focus on</p> <p>9 the first paragraph for right now.</p> <p>10 A. Yes, sir.</p> <p>11 Q. First paragraph, couple lines down:</p> <p>12 "At this time we are only in position to bid on</p> <p>13 the Indianola operation. As an active and</p> <p>14 certified member of the Food Marketing Institute</p> <p>15 and National Counsel of Chain Restaurants'</p> <p>16 Animal Welfare Program, the number of eggs</p> <p>17 available for sale is shrinking. This program</p> <p>18 as you know is not based on elimination of</p> <p>19 housing, but on giving the birds more room per</p> <p>20 cage by decreasing that number. You may or may</p> <p>21 not have heard that by 2008, we will have</p> <p>22 eliminated about 20 percent of our flocks from</p> <p>23 current housing."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>

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<p style="text-align: right;">Page 286</p> <p>1 Q. Is this statement in this letter 2 consistent with your understanding of -- 3 A. I wrote this. 4 Q. Okay. 5 A. I mean, this is a document -- you 6 might have seen it or -- something we looked at 7 earlier today, but our General Managers ran the 8 daily operations and communicated on a local 9 level with the customers. 10 And in this particular case, Ed Scott 11 was one of our key managers that had a good 12 relationship with all these folks. He knew how 13 to handle it. So I wrote this letter for him, 14 and he signed it and, I'm sure, sent it to 15 Bill. 16 Q. And what's the date on it? 17 A. April 10, 2003. 18 Q. And explain what you mean: "This 19 program as you know is not based on elimination 20 of housing." Explain what you mean there. 21 A. I'm sorry, Brian. Ask me that again. 22 Q. Sure. "This program as you know" -- 23 A. "This program as you know is not 24 based on elimination of housing" -- yeah. No, 25 what it's -- again, I'm in shock about the whole</p>	<p style="text-align: right;">Page 288</p> <p>1 Q. Do you remember this 2007 conference 2 in Arizona? 3 A. I remember the conference. I don't 4 specifically remember the language of the -- 5 Q. Of the e-mail? 6 A. -- the e-mail, but I remember the 7 conference, yes. 8 Q. Now, at the bottom of the first page 9 of Exhibit 75, there's an e-mail to Mitch Hill. 10 Do you see that? 11 A. Yes, sir. 12 Q. And that's dated March 23, 2007? 13 A. Yes. 14 Q. And read that e-mail, just the one 15 sentence there. 16 A. "At the request of Jeff Hardin of 17 Cal-Maine Foods, we would like to invite you to 18 the United Egg Producers Animal Welfare 19 conference." 20 Q. All right. And then the next e-mail, 21 Mitch e-mails you directly -- 22 A. Uh-huh. 23 Q. -- same day? 24 A. Yes, sir. 25 Q. And he says, "Count me in for the</p>
<p style="text-align: right;">Page 287</p> <p>1 thing, but the whole purpose of the program was 2 an animal welfare program to give, among other 3 things, the hens more space in the chicken 4 houses they were living in. 5 So we were just -- you know, we had 6 to pull chickens out of cages. That was the 7 only way to accomplish it. So we were pulling 8 chickens out of cages to give them more space. 9 It was as simple as that. 10 Q. I'm going to show you now Exhibit 75. 11 (Exhibit 75 marked.) 12 Q. Take a minute to read that while I 13 pass these out. 14 MR. ROBISON: 15 This, on the phone, is CM00560038-39. 16 Q. Just let me know when you're finished 17 reading it. 18 A. Okay. 19 Q. All right. If you would look at the 20 back page. There's kind of -- well, it looks 21 like to me kind of an announcement from Gene 22 Gregory. Do you see that? 23 A. Uh-huh. 24 Q. You've got to say yes. 25 A. Yeah. I'm sorry. Yes.</p>	<p style="text-align: right;">Page 289</p> <p>1 conference." See that? 2 A. Yes, sir. 3 Q. Is this the e-mail chain that led to 4 you and Mitch attending this animal welfare 5 conference together? 6 A. Yes, sir. 7 Q. All right. And if you and H-E-B 8 people had been talking about the animal welfare 9 program for several years by the time of this 10 2007 conference, why was it you invited Mitch 11 Hill to attend? 12 MR. ALMON: 13 Object to form. 14 MR. AHERN: 15 Object to form. 16 A. As I recall it, this was an update. 17 There was a lot of -- I can't remember the 18 exact -- seemed like we had something earlier 19 today that showed the customer list -- or the 20 list of people that was coming to this 21 conference. 22 MR. ROBISON: 23 Q. Right. That's Exhibit 68. 24 A. Okay. But this was an update to get 25 them up to speed as to what all was going on,</p>

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<p style="text-align: right;">Page 290</p> <p>1 not only with the animal care program, ACC 2 program, but with the -- what was going on with 3 HSUS, what was going on with Cornucopia. I 4 mean, it was a general discussion, as I recall 5 it, about the animal activist groups and what 6 was going on with the certified program. 7 Q. All right. I'm handing you 8 Exhibit 68, which we marked earlier. Is that 9 the agenda for this conference? 10 A. It appears to be, Brian. Again, I 11 don't recall it exactly, but it appears to be, 12 yes. 13 Q. All right. And do you see on the 14 agenda at 2:30 p.m., there was a presentation 15 called "How the UEP Certified Program Came into 16 Existence and How it has Evolved over Time"? 17 A. Yes, sir. 18 Q. I'm going to hand you what I'm going 19 to mark as Exhibit 76. 20 (Exhibit 76 marked.) 21 Q. Take a minute to look through that 22 while I pass it out. 23 MR. ROBISON: 24 People on the phone, the Exhibit 76 25 is Bates numbered V, as in Victor,</p>	<p style="text-align: right;">Page 292</p> <p>1 Certified Company Must: Implement guidelines on 2 100 percent of all company owned or controlled 3 houses regardless of where or how eggs are 4 marketed." Do you see that? 5 A. Yes, sir. 6 Q. And does that describe this 7 100 percent requirement we've been discussing 8 today? 9 MR. AHERN: 10 Object to the form. 11 A. There was no secrets about the 12 100 per. I was selling them -- that 100 percent 13 was important to them. It was important to 14 them, that all the -- that this was an animal 15 welfare program. 16 MR. AHERN: 17 Move to strike as non-responsive. 18 MR. ROBISON: 19 Q. Now, when you took Mitch Hill -- 20 (Discussion off the record.) 21 MR. ROBISON: 22 Q. Now, were you talking to Mitch Hill 23 from H-E-B on a regular basis at this conference 24 in Arizona in April of 2007? 25 MR. ALMON:</p>
<p style="text-align: right;">Page 291</p> <p>1 FFI0159735-763. 2 A. Okay. 3 Q. Does this appear to you to be the 4 PowerPoint presentation that went with that 5 program at 2:30 on the agenda, "How the UEP 6 Certified Program Came into Existence and How it 7 has Evolved over Time"? 8 MR. ALMON: 9 Objection. Foundation. 10 A. I don't specifically remember the 11 presentation itself, but I'm sure that's what it 12 was. It's what it said it was. 13 MR. ROBISON: 14 Q. And what's the date on the front of 15 Exhibit 76? 16 A. April 11, 2007. 17 Q. And what's the date of the 18 presentation at 2:30 p.m. on that agenda in 19 Exhibit 68? 20 A. April 11, 2007. 21 Q. All right. Let's go to -- on 22 Exhibit 76, the PowerPoint slides, let's go to 23 the page that ends in 751. 24 A. Okay. 25 Q. The top of this slide says: "A UEP</p>	<p style="text-align: right;">Page 293</p> <p>1 Object to form. 2 A. I'm sure I was. I was hosting him, 3 so I was with him. 4 MR. ROBISON: 5 Q. Did he ever object to anything he 6 heard about the UEP program at this conference? 7 MR. ALMON: 8 Object to form. 9 A. I don't recall anything. That's been 10 a long time ago, Brian, but I don't recall 11 anything. 12 MR. ROBISON: 13 Q. You don't remember him saying, I 14 can't believe what I just heard that speaker 15 say, I didn't know that was part of the program, 16 or anything along those lines? 17 A. No. 18 MR. ALMON: 19 Object to form. 20 MR. ROBISON: 21 Q. Now, let's go back to the list of 22 attendees, Exhibit 68. 23 A. Yes, sir. 24 Q. Just flip to the second page, please. 25 Sorry. The first page of the attendee list --</p>

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<p style="text-align: right;">Page 294</p> <p>1 A. Okay.</p> <p>2 Q. -- second page of Exhibit 68. Going</p> <p>3 down the right-hand column, you see Mitch Hill</p> <p>4 from H-E-B, his name?</p> <p>5 A. Yes, sir.</p> <p>6 Q. And Judy Holland is listed there from</p> <p>7 Winn-Dixie?</p> <p>8 A. Yes, sir.</p> <p>9 Q. And at the time of this conference,</p> <p>10 2007, was Winn-Dixie a current customer of</p> <p>11 Cal-Maine?</p> <p>12 A. I think so, yes.</p> <p>13 Q. Next page, we have Tommy Reed from</p> <p>14 Walmart?</p> <p>15 A. Yes, sir.</p> <p>16 Q. And was Walmart a current customer at</p> <p>17 this time in 2007?</p> <p>18 A. Yes, sir.</p> <p>19 Q. And then there's a Harriet Solar from</p> <p>20 Kroger. Do you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And was Kroger an active customer of</p> <p>23 Cal-Maine in 2007?</p> <p>24 A. As I recall.</p> <p>25 Q. Do you remember any of those people</p>	<p style="text-align: right;">Page 296</p> <p>1 A. -- if you read the studies and did</p> <p>2 your homework and listened to my boss, the thing</p> <p>3 ranged anywhere from, as I recall it, two or two</p> <p>4 and a half cents a dozen up to 11 cents a dozen,</p> <p>5 as it -- you know, as it all implemented.</p> <p>6 And we were asking at the genesis of</p> <p>7 it for a portion of it to get the thing going</p> <p>8 because we were going to lose -- I don't</p> <p>9 remember the numbers exactly, but we were going</p> <p>10 from 48 to 53 inches, something to that effect,</p> <p>11 in the first -- along with doing all the other</p> <p>12 husbandry things that had to be done.</p> <p>13 Well, there was no way I was ever</p> <p>14 going to get a 4 cent price increase all at one</p> <p>15 time or a 5 cent price increase. And quite</p> <p>16 frankly, we probably didn't understand all of</p> <p>17 the cost as it went along because it was a</p> <p>18 rolled-out program. It implemented over time.</p> <p>19 So the 2 cents or the penny that I</p> <p>20 was going for in 2001 or '2 or '3, whenever it</p> <p>21 was, was kind of like -- in my mind, anyway, it</p> <p>22 was the down payment on it, not knowing what was</p> <p>23 going to happen from there on out.</p> <p>24 MR. ROBISON:</p> <p>25 Q. And do you know whether -- do you</p>
<p style="text-align: right;">Page 295</p> <p>1 coming to you during this Arizona conference and</p> <p>2 expressing any dismay about what they had heard</p> <p>3 about the program?</p> <p>4 A. I've never heard any of them come to</p> <p>5 me ever asking about -- or saying something</p> <p>6 about dismay of the program.</p> <p>7 MR. AHERN:</p> <p>8 Object to the form.</p> <p>9 A. No. Not at the conference.</p> <p>10 MR. ROBISON:</p> <p>11 Q. Whenever you were talking to</p> <p>12 customers about trying to secure some sort of</p> <p>13 price increase to cover the cost of complying</p> <p>14 with the certified program -- you've talked</p> <p>15 about those conversations -- were you trying to</p> <p>16 get a cost increase from your customers that</p> <p>17 would recoup the entire cost of complying or</p> <p>18 just a portion of the cost?</p> <p>19 MR. ALMON:</p> <p>20 Object to the form.</p> <p>21 A. Well --</p> <p>22 MR. ROBISON:</p> <p>23 Q. What was your understanding?</p> <p>24 MR. ALMON:</p> <p>25 Same objection.</p>	<p style="text-align: right;">Page 297</p> <p>1 personally know whether Cal-Maine ever has</p> <p>2 recouped all of the costs that it incurred to</p> <p>3 come into compliance with the UEP program?</p> <p>4 A. I don't. I don't even know how you'd</p> <p>5 measure it, quite frankly, but it was -- you got</p> <p>6 a bunch of assets with 20 percent fewer chickens</p> <p>7 in them.</p> <p>8 Q. And would you personally know of any</p> <p>9 way to calculate any harm to Cal-Maine's</p> <p>10 reputation or goodwill as a result of the</p> <p>11 lawsuits over the last several years, these</p> <p>12 anti-trust lawsuits?</p> <p>13 MR. ALMON:</p> <p>14 Object to form.</p> <p>15 MR. AHERN:</p> <p>16 Object to form.</p> <p>17 A. I'm sorry. I don't understand the</p> <p>18 question.</p> <p>19 MR. ROBISON:</p> <p>20 Q. These anti-trust lawsuits filed by</p> <p>21 the grocery stores started in 2010. You've seen</p> <p>22 one of those. Would you personally have any way</p> <p>23 of calculating the amount of any harm to</p> <p>24 Cal-Maine's goodwill or reputation as a result</p> <p>25 of these lawsuits?</p>

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<p style="text-align: right;">Page 298</p> <p>1 MR. ALMON: 2 Object to the form. 3 A. I don't have a way of calculating it, 4 no. 5 MR. ROBISON: 6 Let's take a break, and I'll see if 7 I'm finished. I'm just going to check my notes. 8 VIDEOGRAPHER: 9 We are now going off the record. The 10 time is 4:31 p.m. 11 (A recess was taken.) 12 VIDEOGRAPHER: 13 We are now going back on the record. 14 The time is 4:40 p.m. 15 MR. ROBISON: 16 I pass the witness. 17 CROSS-EXAMINATION 18 BY MR. AHERN: 19 Q. Mr. Hardin, Patrick Ahern again. I 20 just have a few follow-up questions. 21 Would you pull out Exhibit 73, 22 please? 23 A. Okay. 24 Q. And this is the June 2002 report from 25 FMI/NCCR, correct?</p>	<p style="text-align: right;">Page 300</p> <p>1 MR. ROBISON: 2 Object to form. 3 A. I didn't know what year it started. 4 MR. AHERN: 5 Q. Okay. And would it shock you to know 6 that the UEP started developing its own program 7 before it started talking to FMI? 8 MR. ROBISON: 9 Object to form. Assumes facts. 10 A. We had a -- the industry, as I recall 11 it, had an animal welfare program long before 12 that. 13 MR. AHERN: 14 Q. Okay. Well, would it shock you to 15 know that UEP had started working on this long 16 before it talked to FMI, yes or no? 17 MR. ROBISON: 18 Same objection. 19 A. Again, we had an animal care program 20 long time before this. 21 MR. AHERN: 22 Q. So the answer is no, it wouldn't 23 shock you? 24 MR. ROBISON: 25 Same objection.</p>
<p style="text-align: right;">Page 299</p> <p>1 A. Yes, sir. 2 Q. And on the third page of that 3 document, would you look at that? And I'll 4 direct you to the portion down at the bottom 5 that says "Laying Hens." 6 A. Okay. 7 Q. Okay. And it says there: "UEP 8 developed a process specifically to address 9 animal welfare concerns in 1999." Do you see 10 that? 11 A. Yes, sir. 12 Q. Okay. Is that news to you, that UEP 13 started this in 1999, or did you know that? 14 A. I don't remember specifically the 15 dates -- 16 Q. Okay. 17 A. -- Patrick, but, I mean, this was an 18 issue that was ongoing, and I was talking to my 19 customers about. 20 Q. You've talked a lot about that. I'm 21 trying to get specific answers to questions 22 here, okay? 23 A. Okay. 24 Q. Did you know that the UEP had started 25 developing its own program in 1999?</p>	<p style="text-align: right;">Page 301</p> <p>1 MR. AHERN: 2 Q. Correct? 3 A. No, it wouldn't. 4 Q. And, in fact, the egg industry was 5 the focus of the attacks from the animal rights 6 activists, correct, because it was your 7 practices that they were challenging, correct? 8 MR. ROBISON: 9 Objection. Foundation. Assumes 10 facts. 11 A. My recollection is that the HSUS was 12 attacking many of the animal agricultural 13 groups, us being one of them. 14 MR. AHERN: 15 Q. They were raiding or trying to 16 infiltrate your facilities, correct? 17 A. Yes. 18 Q. So this was an issue for the egg 19 producing industry independently, correct? 20 MR. ROBISON: 21 Object to form. Vague. 22 A. Not that I recall. I remember this 23 being a problem across all of animal 24 agriculture. 25 MR. AHERN:</p>

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<p style="text-align: right;">Page 302</p> <p>1 Q. Oh, I see. Okay. But -- all right. 2 All right. 3 Now, did you ever share with any of 4 your customers the fact that UEP had started 5 working on this program before it started 6 talking to FMI about it? 7 MR. ROBISON: 8 Objection. Assumes facts. 9 A. I'm not sure that I even knew that. 10 The first that I recall of a set of -- 11 MR. AHERN: 12 Q. I'm sorry. So the answer is no? 13 MR. ROBISON: 14 Same objection. 15 MR. AHERN: 16 Q. Did you ever tell any of your 17 customers that the UEP had started working on 18 this before it started working with FMI on it? 19 MR. ROBISON: 20 Same objection. Assumes facts. 21 A. No. Not that I recall. 22 MR. AHERN: 23 Q. Let's pull out Exhibit 75, which is 24 the PowerPoint presentation. Now -- 25 MR. ROBISON:</p>	<p style="text-align: right;">Page 304</p> <p>1 Q. Okay. 2 A. -- I can't remember if it's NuCal or 3 Valley Fresh, but it's one of those northern 4 California producers. 5 Q. But a member of the UEP and an egg 6 producer presented this presentation, correct? 7 A. That's what it appears to be. I 8 don't remember the specifics of the 9 presentation, but it appears that way. 10 Q. Okay. Now, if you go to the page 11 that ends in 744? 12 A. Yes, sir. 13 Q. And it says: "Respected Scientific 14 Committee." See that? 15 A. Yes, sir. 16 Q. Now -- so this is what I was asking 17 you before, and I think you agreed, that the UEP 18 was touting the UEP certified program as being 19 scientifically based. Do you recall that? Do 20 you recall I asked you that? 21 A. I don't recall it, but yes, I'm 22 sure -- we had touted about it, about the FMI 23 program being scientifically based. 24 Q. And this page is consistent with 25 that, correct?</p>
<p style="text-align: right;">Page 303</p> <p>1 I think that's 76. 2 MR. AHERN: 3 Q. I'm sorry. All right. 76, please. 4 A. Okay. 5 Q. Now, first of all, this was presented 6 by Mark Oldenkamp on the second page. Do you 7 see that? 8 A. Yes, sir. 9 Q. Okay. And Mark Oldenkamp was 10 chairman of the UEP Animal Welfare Producer 11 Committee at the time? That's what it says. 12 A. According to this, yes. 13 Q. And Mark Oldenkamp was involved with 14 an egg producer, correct? 15 MR. ROBISON: 16 Object to form. 17 A. I'm not sure about at the time, but 18 yes, he is today. 19 MR. AHERN: 20 Q. I think he's with -- is he with NuCal 21 these days? 22 MR. ROBISON: 23 Same objection. 24 A. I'm sorry, I don't -- 25 MR. AHERN:</p>	<p style="text-align: right;">Page 305</p> <p>1 A. It appears that way, yes. 2 Q. Okay. Now, you've talked a lot about 3 how shocked you have been, okay, in this 4 deposition. 5 A. Uh-huh. 6 Q. Would you be shocked to know that the 7 respected scientific committee complained to the 8 UEP about their names being put on the early 9 version of the guidelines and asked that those 10 names be removed? 11 MR. ROBISON: 12 Objection. Assumes facts. 13 MR. AHERN: 14 Q. Would that shock you? 15 MR. ROBISON: 16 Misconstrues. 17 A. I didn't have any knowledge of that. 18 MR. AHERN: 19 Q. Would that shock you? 20 MR. ROBISON: 21 Same objections. No foundation. 22 A. I don't know whether it would or not. 23 I'm sorry, I don't know whether that would shock 24 me or not. I didn't know any of them. 25 MR. AHERN:</p>

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<p style="text-align: right;">Page 306</p> <p>1 Q. Would that be information that you 2 would want to share with your customers? 3 MR. ROBISON: 4 Same objections. Assumes facts. 5 Misconstrues. No foundation. 6 A. Again, I didn't start selling 7 anything to my customers until the FMI 8 announcement, that I recall. 9 MR. AHERN: 10 Q. Would the fact that the scientific 11 committee asked for their names to be removed 12 from the UEP guidelines be something that you 13 would have discussed or should have discussed 14 with your customer? 15 MR. ROBISON: 16 Same objection. Assumes and 17 misconstrues facts. 18 A. I don't know. 19 MR. AHERN: 20 Q. Well, it was being touted as being 21 scientifically based, right? 22 MR. ROBISON: 23 Same objections. 24 A. Yes. 25 MR. AHERN:</p>	<p style="text-align: right;">Page 308</p> <p>1 Whoa. Don't talk. You don't have to 2 answer that garbage. I object to the 3 characterization. 4 MR. AHERN: 5 Q. All right. Let's pull out 6 Exhibit 71, please. This is the UEP Animal 7 Husbandry Guidelines for U.S. Egg Laying Flocks, 8 2002 edition. And if you would go to page 10 of 9 this document, please. It's actually the 11th 10 page of the exhibit. 11 Okay. Look at the -- under 12 "Handling, Transportation and Slaughter," look 13 at the fourth paragraph, please. It says: 14 "When hens must be euthanized on the farm, 15 cervical dislocation is an accepted method when 16 performed by skilled workers. Carbon monoxide 17 can be used to euthanize large number of hens in 18 modified atmosphere killing (MAK) carts." 19 Do you see that? 20 A. Yes, sir. 21 Q. So what is cervical dislocation? 22 A. I don't know. 23 Q. Snapping the necks; is that right? 24 MR. ROBISON: 25 Objection. Foundation.</p>
<p style="text-align: right;">Page 307</p> <p>1 Q. So if the scientists who are the 2 basis for that touting said, take our names off 3 of it, that's something that you would have 4 shared with the customers, right? 5 MR. ROBISON: 6 All of the same objections. 7 A. I'm sorry, Pat, I don't know. I just 8 don't -- I don't know because I don't know the 9 time frame you're talking about. 10 Again, from my perspective, I'm just 11 a sales guy, so I didn't go selling a program 12 until it was announced. 13 MR. AHERN: 14 Q. I'm sorry. That's not responsive. 15 A. Well, I'm sorry. I don't mean to be 16 that way. 17 Q. Well, but you didn't have any problem 18 speculating in response to Mr. Robison's 19 questions, but I'm asking you a question here -- 20 A. Again, you're asking me about -- 21 Q. -- and you're having a hard time 22 answering? 23 A. -- you're asking -- no, you're 24 asking -- 25 MR. ROBISON:</p>	<p style="text-align: right;">Page 309</p> <p>1 A. I don't know. 2 MR. AHERN: 3 Q. Okay. You don't know. 4 A. I don't know. I'm not a chicken guy. 5 Q. Okay. You're not a chicken guy. 6 So what is carbon dioxide, 7 euthanization by carbon dioxide? 8 A. I mean, it's a way of euthanizing the 9 hens, gassing the hens, I guess, but I'm not 10 familiar with it. I've never seen it done. 11 Q. That's gassing the hens, right? 12 A. I've never seen it done, but I assume 13 so. 14 Q. And you've previously testified that 15 the purpose of the UEP animal -- UEP certified 16 program was to take better care of the hens, 17 right? And now you're sitting here with 18 guidelines that talk about snapping their necks 19 and gassing them, correct? 20 A. No, sir. 21 MR. ROBISON: 22 Object to the form. 23 A. No, sir, that's not what I said. 24 MR. AHERN: 25 Q. Well, you did say that.</p>

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<p style="text-align: right;">Page 310</p> <p>1 A. No, sir, I didn't. I said that this 2 was an animal welfare program. 3 Q. Okay. And this is an animal welfare 4 program that has, as part of its component, 5 snapping their necks and gassing them; is that 6 correct? 7 A. That's what it appears to be, yes. 8 MR. AHERN: 9 I have nothing further. 10 MR. ROBISON: 11 Anyone else? 12 MR. ALMON: 13 I have nothing else. 14 CROSS-EXAMINATION 15 BY MR. ROBISON: 16 Q. Mr. Hardin, when you handed out 17 Exhibit 71 to customers, how many of them 18 objected to the clause on euthanasia on page 10 19 that Mr. Ahern was just asking you about? 20 MR. AHERN: 21 Object to the form. 22 A. Nobody that I recall. Nobody that I 23 recall. 24 MR. ROBISON: 25 Nothing further.</p>	<p style="text-align: right;">Page 312</p> <p>1 CERTIFICATE OF COURT REPORTER 2 I, CELESTE O. WERKHEISER, Registered Merit 3 Reporter and Notary Public, in and for the 4 County of Hinds, State of Mississippi, hereby 5 certify that the foregoing pages contain a true 6 and correct transcript of the testimony of the 7 witness, as taken by me at the time and place 8 heretofore stated, and later reduced to 9 typewritten form by computer-aided transcription 10 under my supervision, to the best of my skill 11 and ability. 12 I further certify that I placed the witness 13 under oath to truthfully answer all questions in 14 this matter under the authority vested in me by 15 the State of Mississippi. 16 I further certify that I am not in the 17 employ of, or related to, any counsel or party 18 in this matter, and have no interest, monetary 19 or otherwise, in the final outcome of the 20 proceedings. 21 Witness my signature and seal, this the 22 25th day of April, 2014. 23 24 25 Celeste O. Werkheiser, RMR, CSR #1307 My Commission Expires May 6, 2015</p>
<p style="text-align: right;">Page 311</p> <p>1 We are finished. We'll sign and 2 return and -- 3 MR. AHERN: 4 Highly confidential? 5 MR. ROBISON: 6 -- highly confidential, just like the 7 other ones. 8 VIDEOGRAPHER: 9 That's it? 10 This concludes the videotaped 11 deposition of Jeff Hardin, which consists of 12 four tapes. We are now going off the record. 13 The time is 4:51 p.m. 14 (Deposition concluded at 4:51 p.m.) 15 16 17 18 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 313</p> <p>1 ACKNOWLEDGMENT OF DEPONENT 2 I, JEFF HARDIN, do hereby certify 3 that I have read the foregoing transcript of my 4 testimony taken on 4/18/14, and further certify 5 that it is a true and accurate record of my 6 testimony (with the exception of the corrections 7 listed below): 8 Page Line Correction 9 _____ 10 _____ 11 _____ 12 _____ 13 _____ 14 _____ 15 _____ 16 _____ 17 _____ 18 _____ 19 _____ 20 _____ 21 _____ 22 JEFF HARDIN 23 SUBSCRIBED AND SWORN TO BEFORE ME 24 THIS ____ DAY OF _____, 20____. 25 (NOTARY PUBLIC) MY COMMISSION EXPIRES:</p>

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&	105 5:23	136 113:25	1989 161:11
& 2:2,8 3:3 6:14 8:19 9:6	105.00 80:21	136.0. 113:18	1999 299:9,13,25
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05 93:12	10:19 67:17	14.5 119:8	168:11 207:25
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07 111:2 114:6	11 7:2 25:17 40:21	142 6:7	2'03 93:4
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1 23:6 36:19 109:17 110:13 113:18 129:24 132:24 158:11 159:4 175:16 178:14 251:2 277:15,24 283:5	291:16,20 296:4	146 65:13 122:2,2	2.10. 253:7
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